

CHRISTELLA ASTANIOU TRYTSMAN

v

KOBRA SECURITY LIMITED

KARL WAYNE TRYTSMAN

ERICH PETER TRYTSMAN

HIGH COURT

MAKUNGU, J.

13th JULY, 2011.

2003/HK/189

[1] Companies Act - Winding up petition - Whether Competent to wind up Company.

This was an application to dismiss winding up petition for unreasonable delay, and failure to prosecute.

Held:

1. The first respondent was able to carry on business for seven to eight years since the petition was filed.

2. In the circumstances the petitioner had not established a prima facie case for winding up as required under section 271 (3) (b) of the Companies Act.

Legislation referred to:

1. Companies Act, cap 388 s.271 (3) (b).

No appearance for the petitioner.

W. Forrest of Messrs Forest Price and Company for the respondent.

MAKUNGU, J.: This is an application to dismiss winding up petitioner for unreasonable delay, and failure to prosecute. The application was filed on 31st March, 2010. The grounds elucidated in the affidavit in support are that the petitioner has failed to prosecute her petition which was in any event wrongly filed as it refers in detail to the matrimonial proceedings between the petitioner, and the 2nd respondent. The Petition states that the 1st respondent is insolvent, and yet seven years later it is still in business. The 1st respondent is not subject to an y claim for back taxes by Zambia Revenue Authority. The petitioner claims to be a director of the 1st respondent entitled to director's fees but she is not. Paragraph 10 of the winding-up petition merely says: "it is doubtful if these claims will be settled by the 1st respondent." The affidavit further reads: The petitioner has failed to comply with the Companies Act provisions regarding winding-up, and has not provided security for costs. The affidavit in opposition sworn by the petitioner, and filed on 15th July, 2010, is to the effect that the deponent has been advised by her counsel of record and verily believes that the application to dismiss petition is mischievous, and

ought not to be entertained as a similar application made in 2009, was previously rejected by the Court on the ground that the petitioner had shown keenness to prosecute the case as evidenced by the attendances by her advocates, and the petitioner herself. The petitioner further states that she is under no obligation to provide security for costs.

The application was set for hearing on 15th June, 2011. On that date, the respondent's advocate Mr. Forrest was present. The petitioner, and her advocates were absent. So the matter was adjourned to 7th July, 2011. On that date, Mr. Forrest was present. The Petitioner and her advocates were absent. I took Mr. Forrest's word that he had told Mr. Bota of Messrs William Nyirenda and Company about the new hearing date, and allowed Mr. Forrest to proceed with the application. He relied on the affidavit in support, and submitted that this case has been pending for 8 years, so it has been self-defeating.

I have carefully considered the affidavits in support, and in opposition to this application. I accept the 2nd respondent's evidence that the 1st respondent has been able to carry on business for the past seven to eight years since the petition was filed. I find that the petitioner has not established a prima facie case for winding - up. The record shows that the petitioner has been making one interlocutory application after another, thereby unreasonably delaying the conclusion of the matter for about eight years.

Considering all the circumstances of the case, I find that the petitioner has not established a prima facie case for winding-up as required under section 271 (30 (b) of the Companies Act. According to section 271 (3) (a) of the same Act, the Court was supposed to order the petitioner in this case to pay a reasonable amount of money into Court as security for costs. But no such order was made. For the foregoing reasons, the petition for winding-up is dismissed with costs. I grant leave to appeal on condition that K100,000,000, be paid into Court as security for costs within 14 days from the date hereof.

Petition dismissed.