

**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**

2014/HPC/0153

(Commercial Jurisdiction)

IN THE MATTER OF: A WINDING UP PETITION OF RANA
MARKETING LIMITED

AND

IN THE MATTER OF: SECTION 271 (1) (b) AND SECTION 272
(1) (c) OF THE COMPANIES ACT CAP 388
O THE LAWS OF ZAMBIA

BETWEEN:

RAJENDRA SOMBHAI PATEL
AMADEUS INTERNATIONAL LIMITED

**1st PETITIONER
2nd PETITIONER**

AND

RANA MARKETING LIMITED

RESPONDENT

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN
CHAMBERS ON THE 5TH DAY OF JUNE, 2015**

*For the 1st and 2nd Petitioner: K. Viyuyi (Ms), Messrs Simeza Sangwa and Associates
For the Respondent: F Munsaka (Mrs), Messrs Douglas and Partners*

R U L I N G

Cases referred to:

1. In re Artistic Colour Printing Company (1880) 14, CH D 502
2. Bellamano v Ligure Lombard Limited (1976) ZR 267

Legislation referred to:

3. The Companies Act, Chapter 388 of The Laws of Zambia

On the 17th day of April 2015, **Rajendra Sombhai Patel** and **Amadeus International Limited, the 1st and 2nd Petitioners respectively** filed a winding - up Petition against **Rana Marketing Limited**, the Respondent.

There are basically two grounds on which the Petition is premised, namely:

- 1. That the Respondent is unable to pay its debts and**
- 2. That it is just and equitable that the Respondent should be wound up.**

Attendant to the Petition was an application for appointment of a Provisional Liquidator.

Before that application could be heard, the Respondents applied to this Court for stay of the winding up proceedings on the ground that the Respondent has a claim against the Petitioners under **Cause No. 1997/HP/2766** where they are claiming an amount which by far exceeds the amount the Respondents have admitted owing the Petitioners by way of taxed costs.

The application by the Respondent has been made pursuant to **Section 276 of The Companies Act³**.

According to the Respondents, if the winding up proceedings are not stayed, the Respondent shall lose its **locus standi** under **Clause 1997/HP/2766** and as such its claim shall be rendered nugatory and a mere academic exercise.

At the hearing of the application, the parties relied on their respective affidavit evidence, skeleton arguments and in addition made brief oral submissions.

I have elected to be very selective and not capture most of the issues which have been raised by both parties in view of the interesting issue which was raised by Counsel for the Petitioners that **Section 276 of The Companies Act³** under which the Respondents application has been brought does not empower the Court to stay the actual winding -up proceedings and that therefore the application is misguided.

Section 276 of The Companies Act provides as follows:

“if at any time after the presentation of a winding - up petition and before a winding up Order has been made the Company or the Creditor or member may, where any action or proceedings against the Company is pending, apply to the Court to stay or restrain further proceedings in the action or proceedings and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit”

In my understanding of **Section 276 of The Companies Act³** I have no reservation but to agree with Counsel for the Petitioners, that, that provision of the law does not by any means empower the Court to stay proceedings in the winding - up petition.

What it does is that it empowers the Court to stay and/or restrain proceedings which are outside the winding-up proceedings at hand and which proceedings are against the Company i.e the Respondent.

Illustrative of the aforesaid is the case of **In re Artistic Colour Printing Company**¹.

It must here be emphasized that when applications are made to the Court, the provision of the law under which an application are made should be disclosed and correctly so. The Applicants have an obligation to follow the rules in making their application and where there is no compliance the Court has the power and can exercise its powers to dismiss the application. In the case of **Bellamano v Ligure Lombard Limited**², **Gardner J** observed that:

“The application in this case was made by summons applying for dismissal of the action and other reliefs. It is not indicated on the summons under what Order and rule the application is made and I would point out in passing that it is always necessary on making an application for the summons or notice to contain a reference to the Order or rule number or other authority under which the relief is sought”.

The rationale behind that statement is to ensure that not only is the other party put on notice under what provision of the law the application is made as for them to adequately and meaningfully

respond, but also to ensure that the Court is satisfied that it has the power or authority to do what it is being asked to do and that it will do so within the rules of the Court.

It is in view of my understanding of **Section 276 of the Companies Act³** that this Court has no power or authority to stay the winding- up proceedings.

I am indebted to Counsel for the Petitioner for bringing to the attention of the Court the provisions of **Section 296 of The Companies Act³** which empowers the Court to stay winding-up proceedings. However an application here can only be made after an Order for winding up has been made and not at the stage we have reached in this matter.

In view of the aforesaid, **the Respondents application is incompetently before this Court and is accordingly dismissed** with costs to the Petitioners.

Leave to appeal is hereby granted.

Delivered at Lusaka this 5th day of June 2015.

Justin Chashi
HIGH COURT JUDGE

