

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 111 OF 2005

JEETEN SINGH SEHMI..... APPLICANT

VERSUS

JASKI LIMITEDRESPONDENT

RULING

A.Shangwa,J.

On 19/7/2005, Ms Hamida Sheikh filed a petition on behalf of JEETEN SINGH SEHMI for winding –up of a company known as JASKI LIMITED. She did so under SS.167(b) (e) and (f), 168 and 170 of the Companies Ordinance cap. 212 and the Companies (winding –up) Rules, 1929.

On 27/9/2005, Mr. Ademba Gomba filed a reply to the petition on behalf of the respondent Company JASKI LIMITED

in which he raised a notice of preliminary objection to the petition on three grounds which are as follows :

1. That the petition lodged by the petitioner and issues arising are issues which are res subjudice as they are issues likely to arise in commercial case No.69 of 2005 between Jaski Limited (the respondent herein) versus Chui Bay Investments Limited and Jeeten Singh Sehmi (the petitioner), currently pending before his Lordship Mr. Justice Massati; and / or in the alternative;
2. That the petition is a petitioner's attempt to preempt or otherwise obstruct the proceedings in commercial case No.69 of 2005 and the general course of justice therein anticipated; and
3. That the petitioner has no cause of action nor reason to bring and prefer the petition for winding up of the respondent company and the petition manifests absolute abuse of process.

On 3/10/2005, Ms Hamida Sheikh also raised a notice of preliminary objection on a point of law that the respondent has not filed an affidavit in opposition to the petition.

Ms Hamida Sheikh for the petitioner submitted that the respondent has wrongly filed a reply to the petition instead of filing an affidavit in opposition to the petition . She said that the requirement to file an affidavit in opposition to the petition is mandatory and it is provided for under r.35(1) of the Companies (winding up) Rules, 1929. Furthermore, she said that such an affidavit was supposed to be filed within 7 days from the date of service of the petition. She contended that as the respondent has not done so, the petition remains unopposed.

In his reply, Mr. Ademba Gomba conceded that he did not file the affidavit in opposition to the petition. He stated that he did not do so because the petition was served on him

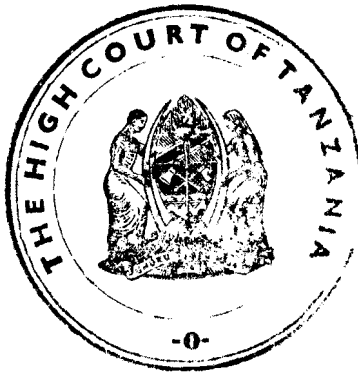
with the court summons which required him to file a written statement of defence within 21 days from the date of service. He asked the court to exercise its discretionary powers to extend the time within which to file an affidavit in opposition to the petition. In addition to that, he withdrew the reply to the petition and affidavit verifying the petition filed on 27/9/2005.

So far so good. As learned counsel for the respondent concedes to the fact that he did not file the affidavit in opposition to the petition within the specified time as required under r. 35 (1) of the Companies (winding up) Rules, 1929 and prays for extension of time to do so; and as he wishes to withdraw his reply to the petition and the affidavit verifying the petition, I do uphold the petitioner's preliminary objection. Having done so, I hereby mark the respondent's reply to the petition and the affidavit verifying the same as withdrawn with costs.

I am sorry to say here that the respondent's prayer for extension of time to file an affidavit in opposition to the petition cannot be granted by this Court unless a formal application supported by affidavit is filed in Court for consideration.

Learned counsel for the respondent Mr. Ademba Gomba did not make any submissions or arguments in respect of his preliminary points of objection to the petition. On the other hand, learned counsel for the petitioner Ms Hamida Sheikh submitted that the respondent's preliminary points of objection to the petition are misconceived. She gave some reasons for her submission. I will only mention two of those reasons: First, that the winding up High Court Miscellaneous Civil Cause No.111 of 2005 was filed on 19/7/2005 and commercial Case No. 69 of 2005 was filed on 19/8/2005 after filing the said petition. Second, that commercial case No. 69 of 2005 was struck out by Massati, J.

In my view, as learned counsel for the respondent did not make any submission and arguments concerning his preliminary objection, an inference has to be drawn from his failure to do so that he lost interest in it or he abandoned it. Therefore, I strike it out with costs.




A. Shangwa, J.

24/5/2006.

Delivered in open Court this 24th day of May, 2006.


A. Shangwa,

JUDGE

24/5/2006.