REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

Winding Up Cause 35 of 1997

IN THE MATTER OF THE WINDING UP OF"K"BOAT SERVICE

FOURTH RULING

This ruling is on the application filed under the inherent jurisdiction of this court, and under rules 6 and 7(2) of the Companies (Winding-Up) Rules, by which the court is asked to strike out or proceedings dated August 25, 1997.

There is a limited liability company called "K" Boat Services Ltd (hereinafter referred to as "the company"). It was incorporated under our Companies Act in January 1967. Its registered office is said to be at Ras Liwatoni, Mombasa. It was established for a wide range of objects, going by what is set out in paragraph 4 of the petition. All the authorized and issued shares of the company were acquired by the petitioner, paolo Murri and his two brothers, namely, Gian Battista Murri and Metro Murri (they are called the "Murri brothers"). Metro and Gian own 6,667 shares each, and the petitioner, Paolo, owns *6,666* shares, that is to say, only one share less than each of the other two brothers.

The petitioner says in his petition, that at all times since the acquisition of the company by the Murri Brothers, Gian Battista Murri, has been the managing director of the company, and for the most part of the petitioner and the other brother, pietro, have not been directors and had left the running of the company entirely in the hands of Gian Battista. Metro passed away in 1987, and since then, there has been a succession of disputes as regards his estate and the matter of his estate is before an Italian court

It is said by the petitioner mat principally the dispute is between Gian Battista and then-sister Marianna murri, in whose favour the late Metro Murri left all his estate under a written will. According to the petitioner if the will prevails, then the sister and the petitioner wojld be entitled to two third's of the late Pietro's shares thus giving them a majority of the shares in the company. It is not shown how that would come about as an automatic consequence

The petitioner says in the petition, that "by creating a dispute Gian Battista has effectively frozen Pietro's shares, leaving him" and the petitioner "the only effective shareholder. As he holds 6667 shares to my 6666 shares, he holds the controlling vote by one share by reason of which he has treated the company as his own, excluded me generally and greatly oppressed me as a minority." (see para.7 of the petition); and Gian Battista is said to have at all times ran the company to the exclusion of the late Pietro and the petitioner, doing so with the assistance of L D Galli, a general manager and also a director of the company who acts entirely at the direction of Gian Battista.

In the petition, the petitioner alleges (at para 10) that for many years, Gian Battista, aided and abetted by Galli has appropriated and used the assets and the income of the company for his own benefit illegally and without the authority or approval of the other shareholders; and the assets of the company have been

treated by him as his personal property without regard to the commercial viability of the company and depriving the company of profits, which have been diverted to other companies owned and controlled by Gian Battista, as detailed in paragraph 11 of the petition. Year after year the company makes losses.

The petitioner has protested but his protests have been ignored. The petitioner now fears that the financial situation of the company is so bad as a result of the running down of the company and its mismanagement by Gian Battista and his associate Galli, that the company may face insolvency (para 12). The petitioner says that he has repeatedly requested Gian Battista to stop dissipating and using the assets of the company for his own use and urged him to run the company as a proper commercial entity with proper accounts and management; but all the requests have been ignored, and Gian Battista continues using and operating the company as his own personal property, (para 13).

The petitioner looks at audited accounts of the company for the years 1987 up to 1992 and says that they show operating loses (as says at paras 14-17). And then says (para 18) that having created an operating loss in each year, Gian Battista has yearly purported to lend money to the company to offset the current liabilities of the company and the negative share capital reserve, which loan would be demanded only after the financial position of the company improved and other creditors' demands met The loans were interest-free; and there are no fixed repayment terms, (para. 18).

The petitioner alleges (para s 21 and 22) that Gian Battista is in a tremendous conflict of interest and in breach of his fiduciary duties as a director, is guilty of misconduct and mismanagement and has unjustly enriched himself, aided by his co-director and associate Galli at all times, he says (para 23) that the company "urgently requires cash infusion if it is to stave off collapse", he adds (at para 24) that having been excluded from the company's books and records for so long, it has been impossible for the petitioner "to ascertain exactly what has happened to the assets and income of the company for all these years."

"In these circumstances," the petitioner says, (at para 26), "the affairs of the company have been conducted in a manner oppressive to the other members of the company" by reason of the actions of Gian Battista aided by Galli "and that it would be just and equitable that the company should be wound up. However, your petitioner further submits that such winding up would unfairly prejudice your petitioner and the other members of the company".

Basing himself on all these matters raised by him, the petitioner prays for orders that his brother Gian Battista and Galli, be removed from running the company; that an interim liquidator be appointed and vested with enumerated powers; that section 211 of the Companies Act remedies be ordered, including removing and barring Gian Battista and Galli from acting as directors of the company, and appointing the petitioner and his sister Marianna as directors of the company with full powers under the articles of the company, and ordering Gian Battista and Galli to account and reimburse the company for all monies, assets and profits said to have been wrongfully taken or diverted by them from the company.

The petitioner attached to his petition a formal affidavit, sometimes known as a statutory affidavit, verifying the petition in two sentences, that he is a shareholder with 6,666 of the 20,000 issued shares of the company and he is the petitioner; and that his statements in the petition are true wile he believes those of any other person to be true.

Bom Gian Batista Murri and Leonardo D Galli, were convinced that this petition is malicious and meant to ruin the company, and brought this application to have it struck out and dismissed because, they say, it is a malicious prosecution and a scandalous abuse of the process of the court, and that the petitioner pays the costs of the proceedings and of this application. In his affidavit Gian Batista Murri adds that tile petitioner is not bona-fide, and that the petitioner has

Deliberately perjured himself by giving false and misleading facts and suppressing important evidence.

Gian Batista Murri says that the appointment of directors of this family company is regulated by the company's articles of association (attached to his affidavit); that according to the attached copies of the minutes of the various annual general meetings for the years 1991 up to 1996, the appointment of

Leonardo Galli and Gian Batista Murri to the board of directors has at all material times been made by the members at the company's annual general meetings at which the petitioner has at all material times been invited to attend and has in fact attended all the meetings through proxies and participated in the decision to appoint directors of the company. It is further said on oath mat the petitioner has never offered himself for election as a director of the company except in 1996 when he proposed his proxy Francisco Sciortino to be appointed to the board; that as shown in "GM2" Galli has in fact been appointed a proxy of the petitioner and attended the meetings on behalf of the petitioner, where the decisions to re-appoint him to the board have been made.

After tracing the history of the company, including the time it was placed under receivership and Gian Batista Murri purchased it as a going concern out of his own money after which he distributed shares therein equally amongst his brothers and why each brother could not get equal shares because all the shares could not be evenly shared out), and after going into the assets of the company and how he made improvements and other contributions and additions through his personal efforts, Gian Batista Murri shows the growth of the company's assets from a value of shs 4 million in the 1st 26 years to over shs 350 million at the present. He says that for the improvement of its assets and acquisition of more of them, the company has relied substantially on direct loan advances from him, and to a small extent internally generated revenue; and all his loan advances to the company have been audited by a reputable firm of international auditors, Coopers & Lybrand, which audited accounts have been placed before the company's annual general meetings and adopted, as particularly authenticated by the minutes of the extra-ordinary general meeting of the company held on November 7,1996, at which the petitioner's proxy, Francesco Sciortino, proposed:

"with the consent of the shareholders, that Mr GB Murri continues to sustain with his own funds the company. Mr GB Murri is the one that is more than anyone else knowledgeable and interested in the company, and he is the person who more than anybody else wishes the company to survive, therefore asks that he continues to support the company". So, at the request of the shareholders, he continues to say, (Gian Batista Muni continued to finance the operations of the company and to manage its affairs on the understanding that the other shareholders would join him in assisting the company. His financial assistance to the company in form of loans is acknowledged and further encouraged by the interim liquidator appointed by this court, and this is for the purpose of obtaining a projected profitability of the company. Gian Batista Murri continues to say mat the petitioner has not called any meeting to discuss further the financial affairs of the company or its operations, and that the company has only learnt of his ideas, about restructuring the company, through this petition; and none of the other two brothers have ever invested even a cent in the company despite several requests from the company.

As to the petitioner's allegation that Gian Batista Murri has converted the use of company assets for his personal benefit Gian says mat the petitioner is misleading the court by suppressing vital information in order to make the allegations to sound plausible. He says that this issue has never been raised by the petitioner in any annual general meeting of the company. He says that the Murri Brothers jointly or severally own several family companies in various parts of the world and various assets in their individual or joint names, including three ships or vessels and five aircrafts which are at the disposal and personal use of the petitioner at all material times, in relation to which the petitioner enjoys free services at the company's expense, as particularised at paragraph 29; and the issue has never been raised by the petitioner at any annual general meeting of the company about these things. He says (at para 32) that for all these years the members have been content with the use of the company's assets as outlined in the affidavit.

The rest of the affidavit, and that of Leonardo D Galli, explain away in detail, the petitioners' concerns, and particularized the services offered to petitioner's vessels by the company. There is another affidavit sworn by Gian Batista Murri, concerning the estate of parties' late brother Pietro Murri. I have read everything said in all these affidavits and in the annexed copies of various documents.

This ruling is already too long, and it would be unbearably long if I attempted to summarise all these things in this ruling. I hope I be pardoned to consider each thing on mis record without specifically setting it out unless it is extremely imperative to do so. This observation applies to the affidavit of the petitioner,

paulo murri sworn on June 20, 1998, responding to the affidavits of his brother and Galli, in which, among other things, he admits being represented at company meetings by proxy, and trusting Galli to do the right thing. I notice that while the petitioner sometimes says that other evidence to substantiate what Gian Battista said in his affidavit and call them "bald assertions without proof, he too, provides no "proof of his own "bald assertions". In essence the petitioner in his affidavit concedes many material assertions by Gian, such as his being represented by proxies (paras 4 and 9); having no records about funds remittances (para 5); increase in assets value (though 80 and not 800 times) (para 6); obliquely admitting lending of the monies to the company by Gian (para 7); existence of certain audited accounts. He glosses over (para 10) the accusation against him that he suppressed vital information, by simply saying that Gian did not indicate which information was suppressed; and yet the said information is detailed throughout Gian Batista's affidavit, which information was never alluded to in the petition. Indeed most of what the petitioner is now explaining in his responding affidavit should have been disclosed in the petition instead of him waiting until Gian and Galli brought them to light.

He further admits that his ships or vessels have made use of the facilities of the company (which fact he had not volunteered in his petition), and he casually says only that his vessels "is a fraction of the use" by his brother's vessels (see para. 11).

I have gone into all the assertions and counter assertions on both sides, beyond what I have specifically stated here. I have considered the oral presentations and submissions placed before me by the learned advocates for the respective parties. The central theme and picture which is painted by everything on the record is that it is complained by one shareholder who is also a co-director, that one of the directors is doing things injurious to the company, that he is taking what belongs to the company and unjustly enriching himself; that the complaining director (petitioner) does not approve of what me other director is doing in the running of the company; that the petitioner wants to be appointed a director along with his sister and replace the other directors in running the company which should not be wound up. In a word, there is a disagreement on the management of the affairs of the company.

After reading all that has been placed before me by both sides, and after listening to the advocates on both sides, I find a total silence in the petition and by the petitioner's lawyers and those apparently supporting him, on what the constitution of the company says on the powers (if any), of those in charge of the affairs of the company, like the applicant Gian Battista (sometimes spelt with one "t" in some documents) Murri and Galli. There is a total silence on the powers (if any) of shareholders and minorities (like the petitioner). The petition is totally silent on what the memorandum and articles of association of the company says (if at all) about the removability (if any) of a director from office. And if there is any power and procedure specified in those articles of association on removing a director and appointing another or others, the petition does not state what the power and procedure is. If there is such a power and procedure, the petition does not state that such power was sought to be invoked, and that the procedure laid down in the constitution of the company was employed or attempted to be resorted to by or on behalf of the petitioner, and if there were such attempts or actual invocation of the power and procedure under the articles of association, the petition does not state what result came out of those attempts. It is not stated in the petition whether the petitioner or someone on his behalf ever attempted to convene a meeting of any decision-making organ of the company, to attend to the concerns of the petitioner; and if any such organ deliberated on these complaints, or refused to listen to them or refused even to have a meeting for such a purpose, it is not disclosed; if there was such an attempt, it is not said what date or dates that was.

In a word, anything to do with the provisions of the memorandum and articles of association of this company, which was material, has been completely blacked out and unspoken of by the petitioner in the petition and even in the affidavits.

On vital matters which the petitioner ought to be forthright and candid enough to state openly, the petitioner in the petition was silent, only waiting to react to them when raised on the present application. Like his admissions that in fact his vessels use the company's facilities at Mombasa. Like his being represented at company meetings by proxy. Like the company's increase of assets. There are many, many others which, to tabulate here would not be necessary. The petition is not open about why the applicant, Gian Battista, had always been voted back at meetings where the petitioner was represented. The petition

is not open about what has transpired that a proxy of the petitioner proposed that Gian Battista continues to support the company financially and in its management.

The petition says that these alleged troubles started long ago, about ten years ago, since one of the brothers, Pietro, passed away. The petition was presented some ten years later, last year. In this petition no facts are set out on which evidence can be called to explain the delay in presenting the petition until ten years later.

What is pleaded is quite telling about this petition. It is said that since the passing away of Pietro, the surviving brothers and their sister have been locked up in a succession of disputes regarding the estate of their deceased brother, in an Italian court. This fact, taken together with what I have observed upon above and the whole scenario of selected silence and partial information the petition, an impression is created that this petition is a spill-over of the succession disputes in Italy, and that the bitterness apparently generated from those disputes in Italy, is at least one of the driving forces behind mis petition, with the main purpose of probably pressurising the applicant into submission to the demands of the petitioner either in the succession cases or in the running of the company. A petition tinctured with such a pressure motive is not a proper use of this court.

The petitioner says in the petition that he has protested but that his protests have been ignored. The petition does not state where and when and how those protests were made and to whom made. Likewise, it does not say on what occasion and how he repeatedly requested Gian Battista to stop dissipating and using the assets. These and other material facts ought to be in the pleading so that if the petition goes for hearing, evidence may be called to prove those allegations. But it would not be right to wait until at the hearing and then attempt to bring evidence on matters not pleaded.

The petition is not containing allegations which can justify the petitioner to be the person to complain about acts allegedly committed against the company as a separate *persona Juridica.* And, an important finding is this: that basically this is a dispute about the internal management of the company. And yet, the petition has not set out allegations which ought to be the foundation for adducing evidence at the hearing of the petition to show whether the "exhaustion of the local remedies" rule has been complied with or whether the case may be an exception to that rule (explained *vxManzini Wanderers Football Club* v *Special Coco-Cola Committee of the National Football Association cf Swaziland and others* (1970-1976) Swaz L R 428). This is because, in disputes arising between members of a company, domestic remedies must be exhausted before courts of the land will interfere. In the case of a company, the domestic remedies are normally to be found in the Constitution of that company, I.e. its memorandum and articles of association, or some other contractual instrument binding on the members and/or its officials or directors.

According to this principle, neither the members nor the board of directors of a company have an inherent power to remove directors before the normal expiration of their period of office in the absence of a power to do so in the articles *(Imperial Hydropathical Hotel Co, Black pool* v *hampson* (1882) 23 Ch Dl). If the articles do not specify the duration of a director's appointment, he may be dismissed by an ordinary resolution passed by the members at any time. If the articles empower a director's fellow directors to remove him from the board by a notice given to him by them or by the board passing a resolution terminating his appointment, or if the articles empower the board to pass a resolution calling on a director to resign and provide that he shall cease to hold office if he does not so, the other directors must exercise their power of removal in good faith in the interests of the company. All this is taken from Robert R Pennington, Emiritus Professor of Commercial Law at the university of Birmingham, formerly Adviser on company Law to the Commission of the European Communities, in his *Company Law*, 7th edn (1995), at 733. I respectfully approve of these propositions.

The point being made here is this that the removal of a director must be in accordance with the constitution of the company or contract terms. The court comes into the matter as the last resort Facts must be pleaded in this regard. They are not set out in this petition, and it is not disclosed as to what were the contract terms or articles of association on the question of removal of directors, and whether those (if any) domestic remedies have been exhausted. Where are the allegations in the petition, which shall be

proved so that the court shall determine whether the domestic forum rule was observed? They are not in this petition.

It is well known, that an individual shareholder cannot, generally speaking, sue to redress a wrong done to the company, and an elementary principle is that a court does not interfere with the internal management of companies acting within their powers: See the rule in *Foss v Harbottle* (1843), 2 Hare 261; and the exceptions to the rule noted in *Burland v Earle* [1902] Ac83; and see *Onwuka* v *Taymani and six others,* 1968 (2) AL R Comm 313. The petitioner is petitioning on the basis of wrongs alleged to be committed against the company; but his petition does not lay a factual foundation to justify his acting on behalf of the company or behalf of himself, i.e. that the case comes within the exceptions to the rule in *Foss* v *Harbottle.*

Courts will interfere only where the act complained of is *ultra vires* or is of a fraudulent character or not rectifiable by ordinary resolution. It is realty very important to companies and to the economy of the country in general, that the court should not, unless a very strong case is made out on the facts pleaded and proved or admitted, take upon itself to interfere with the domestic forum which has been established for the management of the affairs of a company. Accordingly, acts by or on behalf of a company which require the authority of a resolution of the company and are done without it, or are otherwise irregular, but which can be regularised by the company at a general meeting and without a special resulution, and are neither *ultra vires* nor of a fraudulent character, are not a ground for the court's interference upon a winding-up petition (which is not this case), or a petition to remove a director by a minority shareholder (as in the present case) under the "just and equitable" rule. If the various acts which have been irregularly carried out by *the* company are not acts which are *ultra vires* the company, nor are they acts which require special resolutions of the company, or no fraud has been disclosed with regard to those irregularities, those irregularities should be regularised or nullified by the company at a general meeting as established in the rule in *Foss v Harbottle,* (1843X 2 Hare 461, and also explained by James, LJ, in *In re Lcmgham Skating Rink Co,* (1877),5 Ch D669, at 685: *Cole v RC Irving & Co Ltd and others,* 1970(2) AL R Comm 422.

In accordance with the general rule that the court will interfere to the minimum extent possible with the internal management of a company, it is also trite that the classes of persons entitled to complain about the management of the affairs of a limited liability company are very restricted. Debenture holders are entitled to petition the court to appoint a receiver to protect their interests if the security is in jeopardy and in certain other circumstances. A shareholder, on the authority of *Trade Auxiliary Co* v *Vickers,* (1873), LR 16 Eq 298, may apply for the appointment of a receiver if there is no properly constituted governing body, or there are such dissensions in the governing body that it is impossible to carry on the business with advantage to the parties interested; in such a case, the court will interfere, but only for a limited time, and to as small an extent as possible. There is a clear reluctance of the court to intervene at the behest of a shareholder. It will also intervene in the restricted cases of minority shareholders. The point, is that where the court does interfere, it will do so only for a limited time, purpose and to as small an extent as possible. See *Kalo Dipcarima* v *Bornu Holding Co Ltd,* 1969 (3) AL R Comm 112.

But the courts will interfere where a resolution is improperly passed though ratifiable by ordinary resolution. That is to say, courts will interfere in a matter of the internal management of a company, although it is something the company can deal with by ordinary resolution, if it has been dealt with by a resolution which has been improperly passed, such as a resolution for the removal of a director which has been passed without special notice to the company, or without notice to the director, where such notices are required under the contract or constitution of the company; but the court may refuse to exercise its discretion to grant a declaration in such circumstances if the plaintiff has been dilatory: See *Kalisizo Coffee Factory and six others* v *Wasswa and five others,* 1970 (3) ALR comm 264.

The court takes into account delay, because the doctrine has always been, *vigilantbus, et non dormientibus, jura subveniunt,* meaning, that it is the vigilant, and not the sleepy who are assisted by the law; for, the laws give help to those who are watchful and not to those who sleep. Negligence or unreasonable delay in asserting or enforcing a right is not aided, and delay defeats equity, and equity aids the vigilant and not the indolent; so that, a court of equity, which this one is, always refuses its aid to stale

demands where a party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence; when these are wanting the court is passive and does nothing. The diligent and careful plaintiff is favoured to the prejudice of him who is careless. Thus, declaratory reliefs are in the discretion of the court, and if there has been considerable delay on the part of the plaintiff or petitioner in bringing his proceedings, and there are no extenuating circumstances, or no good cause of the delay is shown why the proceedings had to wait for so long as that, and by the time of filing action or petition many changes have taken place in the company itself, or if the petitioner or plaintiff participated in, or accepted it as a true position, what he now complains of, the discretion of the court should not be sought and obtained, just to make the situation even worse than it is already; *ibid.*

If the court's intervention is sought to provide a final solution to the whole problem, that is understandable; but if the contrary is the case, the court will not intervene: *ibid.*

It cannot be doubted that this court has jurisdiction to grant the declaration and other orders sought; but the power to make such judgments or orders is a discretionary one. The discretion should be exercised with care and caution, and judicially, with regard to all the circumstances of the case. The court win watch with care a claim for a declaration where the judgment cannot be expected to terminate the feuding and litigation between the parties: *Kalisizo Coffee Factory and 6 others*-v- *Wasswa and five others, supra.*

Looking at the whole thing together, I see here the petitioner seeking to correct an internal affairs of the company through the court, where the company and not the court must first attend to the matter. No facts pleaded to justify or to be proved to justify this way of seeking *to* deal with the company's domestic problems. The petitioner does not plead an averment which, when proved shows what article of association was breached or what contractual right was violated. There is an allusion in the applicant The company is the right party and it may obtain restriction where the applicant director unjustly enriches himself at the expense of the company: see Nasir v Berini Bank Ltd 1967(2) AL R Comm 78. The company is the proper parry in an action for a corporate wrong. See *Nigerian Stores Workers Union* v *Uzor,* 1971(2) ALR Comm 412. A member may sue where the act complained of is a wrong to members individually and not to a company or if the act is not ratifiable by a simple majority or is wholly *ultra vires: ibid* But in the instant case, there are no averments in these respects.

It has never been the legal position that when shareholders or directors cannot agree the court moves into the matter to remove one of the disagreeing party, or to wind up the company. If it were the law that on every fauding and falling out amongst directors with shareholders or other directors one or a group of them were merely to allege in a formal affidavit that further co-operation is impossible and that it is just and equitable to remove the other disputant from directorship, or to wind up the company, there would be no companies on earth and directors would be extinct.

A petition cannot be brought if what is complained of is merely a valid exercise of powers conferred in terms of the articles and are actions which are substantially within the contemplation of the parties when they became members of the company. To hold otherwise would enable a member to be relieved from the consequences of a bargain knowingly entered into by him. Averments to point to terms of the articles exceeded are absent in this petition. In fact the articles are not sought to be invoked anywhere in the petition.

Without the petition having as its sole or main focus on the articles of the company what was allegedly done contrary to what provisions of those articles, and pleading averments which will be proved in that regard, the petition does not lay a foundation for proper litigation in court. While the statutory affidavit is always necessary, it is not always sufficient, and it is never sufficient, where the petition is based on allegation of fraud upon the company or other shareholders. The alleged facts of the alleged fraud must be stated on affidavit This was not done on this petition.

Going back to this petition specifically, I find that the remedy of voting the applicant was not alleged to have been tried at all, and if so when this attempt was made; there is no allegation of specific facts of

occasions and methods of excluding the petitioner from the management of the company; the petition suppressed the articles of the company and minutes of general meetings of the company, so that to establish the legal rights and obligations of the parties and that it is just and equitable for the relief sought to be granted to the petitioner, will not be possible as the petition now stands, without these things being made to arise out of the filed petition, the court cannot decide whether the difficulties complained of could be solved by adopting some course authorised by the constitution of the company, or whether it is a case which must be resolved by judicial intervention. Nothing in the Companies Act, including the "just and equitable" provision, entitles a shareholder or any other parry to disregard the obligation he assumes by entering a company, nor does anything in the Act entitle the court to dispense him from that obligation: *Lord Wilberforce in Ebrahim* v *Westbourne Galleries Ltd,* [1973] AC 360, 379.

From my findings I hold that tins petition is not presented in good faith and for legitimate purposes, but for other purposes, such as a desire to put pressure on the company or the applicant director, and to impose the petitioner's win illegitimately upon the other directors. This is wrong: *Re A Company,* [1894] 2 Ch 349,351 Vaughan Williams, J. In particular petition is an extension of the succession dispute in Italy, and that is not a proper purpose for presenting this petition. The domestic forum rule must be complied with before this court is approached for redress.

For these reasons, I grant the application, strike out the petition and dismiss it with costs. It is so ordered.

Signed and dated by me this 1st day of October, 1998, at Nairobi.

RKuIoba

Judge 1.10.1998

1.10.1998

Coram; R Kuloba, J

Mr Gaya holding brief for Mr Oyatsi for applicant

Mr Malik for intended beneficiary

Mr Alibhai for petitioner

Court: This ruling has been read out and delivered by me on this 1st day of October, 1998 in the presence of the learned advocates for the respective parties.

R Kuloba,

Judge 1.10.1998 Mr Alibhai: Ask for copies of proceedings. Ask for stay of execution. Fear that applicant may transfer assets, and if appeal succeeds it will be nugatory, substantial loss may be suffered.

R Kuloba,

Judge 1.10.1998 MrGaya: No stay should be granted. Nothing to be stayed.

R Kuloba,

Judge 1.10.1998 Mr Malik: Support Mr Alibhai's application.

R Kuloba,

Judge 1.10.1998 *Order:* Proceedings and ruling be typed out and supplied on payment of the necessary court charges.

As I have not ordered anything to be done by way of execution of any order right now I have not been made to understand what it is that is to be stayed. On a formal written application this difficulty might be clarified. So let the question of stay of execution be raised on a formal written application on notice, so that the parties may explain what is involved and what is feared. No order for a stay at this point.

R Kuloba,

Judge

1.10.1998.