

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0013-2007

IN THE MATTER OF THE FINANCIAL INSTITUTIONS ACT

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR VOLUNTARY WINDING UP
BY IMPERIAL INVESTMENTS FINANCE LTD

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1.

This application was brought under Section 98(1) of the Financial Institutions Act, No. 2 of 2004; Order LII, Rules 1 and 9 of the Civil Procedure Rules (S-71-1) and Section 98 of the Civil Procedure Act (Cap 71) for leave to voluntarily wind up the operations of the applicant company.

2.

The grounds for the application are contained in the affidavit of Mr. Dan Lutwama ,the liquidator of the Applicant Company and briefly are that:

a)

‘The applicant is an institution regulated by the Bank of Uganda under the Financial Institutions Act (No. 2 of 2004);

b)

The applicant desires to voluntarily wind up its business and has complied with the directions of the Bank of Uganda and the requirements of the Companies Act (Cap 110);

c)

Leave of court is required to fully and effectively voluntarily wind up the applicant;

d)

The interests of the depositors and creditors of the applicant have been provided for as required by the Companies Act (cap 110).

e)

That it is in the interest of justice that the orders sought be granted.'

3.

Section 98(1) of The Financial Institutions Act, No. 2 of 2004 provides that:

'A financial institution may, with the approval of the Central Bank, apply to the High Court for voluntary liquidation of its operations.'

4.

As stated by Mr.Karugaba, counsel for the applicant, it is entirely novel to require a company in voluntary liquidation to seek leave of court to voluntarily wind up its business. The Act does not specify what considerations this court should take into account before it can grant leave for a financial institution to voluntarily wind up its affairs. It has been left to the court to determine what the intention of the legislature. Mr. Karugaba was not able to point the court in any direction in this regard. He stated that his research had not yielded any fruit from other jurisdictions.

5.

The court is conferred with wide discretion under Section 98(1) of the Financial Institutions Act. The purpose of this provision, I presume, is to ensure that before the financial institution that is seeking to voluntarily wind up its affairs does so, it will have fully complied with the provisions of the law and that the interests of depositors and creditors are protected/taken care of in the course of winding up. This appears to be additional to the supervision exercised by the financial regulator in this regard. I propose therefore to examine if the applicant has complied with the law that governs voluntary winding up in Uganda.

6.

The law governing voluntary winding up of a company in Uganda is provided under the Companies Act (Cap 110) and the Companies (Winding up) Rules (S.I. 110 – 2) made there under.

7.

Section 279 of the Companies Act provides that:

‘(1) A company may be wound up voluntarily:-

(a)

When the period if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b)

If the company resolves by special resolution that the company be wound up voluntarily;

(c)

If the company resolves by special resolution to the effect that it can not by reason of its liabilities continue its business, and that it is advisable to wind up.’

8.

And, according to Section 277(1) of the Companies Act,

‘When a company has passed a resolution for voluntary winding up it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette, and also in some newspaper circulating in Uganda.’

9.

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up vide Section 278 of the Companies Act.

10.

Under Section 281(1) of the Companies Act, where it is proposed by members to wind up a company voluntarily, the directors of the company, or in the case of a company having more than two directors, the majority of the directors must at a meeting of the directors make a declaration in the prescribed form to the effect that they have made a full inquiry into the affairs of the company, and that having done so, they have formed the opinion that the company will be able to pay its debts in full within such a period not exceeding 12 months from the commencement of the winding up as may be specified in the declaration.

11.

Such declaration shall, however, have no effect for the purpose of the Act unless-

(a)

It is made within the 30 days immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the registrar for registration before that date; and

(b)

It embodies a statement of the company’s assets and liabilities as at the latest practicable date before the making of the declaration.

12.

The evidence contained in the affidavits deponed by Mr. Dan Lutwama in support of the application show that on 21stFebruary 2007, the applicant's directors made a statutory declaration of solvency and registered it with the Registrar of Companies as required by section 281(1) and (2) of the Companies Act. (See Annexure "D" to the Supplementary affidavit in support of the application).

13.

The company passed a special resolution to wind up voluntarily at an Extraordinary General meeting held on 21stFebruary 2007 and appointed Mr. Lubwama as liquidator (see Annexure "E" to the same affidavit).

14.

Notice of resolution to wind up voluntarily was given in the Gazette, Vol. C No. 12 of 9thMarch 2007 (annexture "F"). However, what appeared in the Monitor Newspaper of January 24, 2007, (Annexures "A" and "B") is not a notice of voluntary winding up.

15.

The two Notices in the Daily Monitor notified the depositors of the Applicant that the Applicant Company "intends to pass a resolution to voluntarily wind up its activities"; and the Creditors of the Applicant that "a meeting of all the creditors...will take place at the Company premises" on Wednesday 21stFeb 2007, and listed 'Notice winding up of the Company' as the 3rd item on the Agenda. In addition to this, the Notices were advertised on 24thJanuary 2007, long before the Resolution for Voluntary winding up was passed by the Applicant Company on 21stFebruary 2007.

16.

This Notice does not therefore satisfy the provisions of Section 277(1) of the Companies Act which require that the Company shall give Notice of the Winding up resolution within 14 days after the passing of the resolution.

17.

What are the consequences of none-compliance with Section 277(1) of the Companies Act? It is important, especially in matters of this nature that the applicants do comply with the law, as laid down in an Act of Parliament. It may be contended that no one will be prejudiced if this infraction is overlooked. I suppose we would never know if any one has suffered prejudice precisely because of overlooking this infraction. This is so especially given that these

proceedings are essentially ex parte. I would therefore decline at this stage to grant leave sought but would provide the applicant with an opportunity to comply with the requirements of the law.

18.

The applicant is given 30 days from the date of this ruling to advertise notice of a voluntary winding up resolution that was passed by the company in a daily local newspaper, and thereafter the applicant may file further papers indicating compliance thereof and move this court to issue the leave sought.

Signed, dated, and delivered this 29th day of November 2007

FMS Egonda-Ntende
Judge

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