

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA
CIVIL SUIT No. 84 OF 2007

SSEBANAKITTA STEPHEN ===== PLAINTIFF
VERSUS
KAKIRA SUGAR WORKS ===== DEFENDANT

BEFORE HON. JUSTICE MICHAEL ELUBU

RULING

At the commencement of the hearing of this suit, the defendant raised a preliminary point of law namely that the defendant is in the process of voluntarily winding up. To that end therefore the law requires that all proceedings or other legal processes shall not be commenced or continued against the company or its property.

In the result the Defendant prays for a stay of proceedings until the conclusion of the liquidation process.

The Plaintiff opposes this application on two fronts:

Firstly, that Sections 268 – 271 of *The Companies' Act* were not complied with by the defendant when they initiated the liquidation. This part of the Act regulates the procedure for liquidation.

Secondly, that Sections 120 -123 of *The Insolvency Act* stipulate that a stay of proceedings is not automatic but that the court must grant an Interim Protection

Order before the powers of the Directors are vested in the liquidators. It is his prayer that having failed to adhere to these provisions of the law the Preliminary Objection of the defendant cannot stand.

I have listened to the submissions of Counsel on both sides.

The issue here is whether the purported voluntary winding up of the defendant was proper, secondly whether the provisions of sections 120 – 123 of the **Insolvency Act** were adhered to.

Sections 120 – 123 of *The Insolvency Act 14/2011* fall under Part V of The Act which deals with the Insolvency of Individuals and not companies. To that end therefore the provisions cited have no application in these proceedings as the defendant is an incorporated company.

With regard to the first aspect, whether S. 268 – 271 of *The Companies Act* were complied with, S. 268 requires that in voluntary winding up the company pass a special resolution for voluntary winding up; it shall then within 14 days give notice of the resolution in the gazette and in a newspaper; lastly the resolution shall be registered with the Registrar of Companies.

The defendant has filed in this court, resolutions of the share holders of the defendant in which it was agreed Kakira Sugar Works (1985) Ltd be voluntarily wound up. The resolution was lodged with the registrar on 16/10/2014.

I have not seen a copy of the notice. However under S.269 (3) of *The Companies Act* lack of notice does not invalidate the proceedings but attracts a default fine.

In the result, it would appear that the Defendant is in the process of a voluntary winding up.

That said, S.97 (1) (c) of provides:

“At the commencement of liquidation proceedings, execution or other legal process shall not be commenced or continued and distress shall not be levied against the company or its property.....”

I therefore find that the defendant is under liquidation. By virtue of the above provision legal process against a company in liquidation is supposed to be stayed. For that reason these proceedings are accordingly stayed pending the conclusion of the liquidation process.

Costs shall be in the cause.

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MICHAEL ELUBU
JUDGE
31/08/2017