

REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT-00-CC-MA-0695-2005

(Arising from HCT-00-CC-CI-0025)

IN THE MATTER OF THE COMPANIES ACT, CAP 110

AND

IN THE MATTER OF A WINDING UP PETITION BY RANKCONSULT (U) LIMITED

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. M/S Rankconsult (U) Ltd, hereinafter referred to as the company, filed a petition for winding up by order of court on the ground that it can no longer meets its financial obligations. That petition is opposed by one of the creditors of the company, or the only creditor so far to respond to that petition, M/S Uganda Revenue Authority, hereafter referred to as URA, the tax collection agency for the Government of Uganda. The hearing of the said petition was held over until an application filed by URA was heard and disposed of. This ruling is in respect of that application.
2. URA applied to this court for appointment of an interim liquidator, in accordance with Section 238 of the Companies Act. In addition URA seeks these other orders. 1. A competent and professional firm of auditors be appointed interim liquidators. 2. The company files its statement of affairs from the year 2000-2005. 3. Costs of this application and that of the interim liquidators be provided for.
3. This application is based upon 7 grounds set forth in the chamber summons which I will reproduce below.
 1. The petitioner was a recipient of large sums of money from the Electoral Commission from which taxes fell due and were payable in 2001/2002 but did not remit the money.
 2. The petitioner engaged the applicant in protracted negotiations

with numerous assurances/ability of its competence/ability to pay the said amount and the same did not materialise.

3. The petitioner has in the mean time transferred all its funds from the said accounts to unknown persons and created floating charges on its properties.

4. The petitioner has neither filed statements of account with Uganda Revenue Authority nor the Company Registry and has failed to produce books of accounts.

5. The petitioner formed a new company in April 2005 and in a fraudulent preference has transferred the same shares into the names of its individual shareholders.

6. The petitioner's winding petition is an abuse of court process.

7. It is in the interest of substantive justice that a professional firm of Auditors is appointed as interim liquidators of the respondent company.

4. This application is supported by an affidavit sworn by Mr. Okodi James, the Manager Debt Collection and Tax Appeals. He states that the Petitioner owes URA Shs.4,281,884,492.00 (Four billion, two hundred and eighty one million, eight hundred eighty four thousand four hundred and ninety two only) which arose out of a contract with the Electoral Commission. The petitioner received all its payments from Electoral Commission but failed to remit the taxes due. The petitioner engaged URA in protracted negotiations since 2002 until June 2005. URA is now in the midst of an investigation into the financial affairs of the petitioner and its directors, and Mr. Okodi contends, it is in the interest of substantive justice that an interim liquidator is appointed pending the conclusion of its investigations. The affidavit contains other matters in support of the grounds set out herein earlier.
5. This application is opposed and an affidavit in reply was sworn by Mr. Frank Katusiime, the Managing Director of the company. It refutes all allegations of bad faith, stating that the money it received from the Electoral Commission, it paid out to other creditors of the company. And now the company has no cash to pay its tax obligations.
6. Section 238 of the Companies Act states,
 - '(1) The court may appoint the official receiver to be the liquidator provisionally at any time after the presentation of a winding up petition and before the making of a winding up order.
 - (2) Where a liquidator (hereinafter referred to as interim liquidator) is so appointed by the court, the court may limit and restrict his or her powers by the order appointing him or her.'

7. Rule 27 of the Companies (Winding Up) Rules, (hereinafter referred to as the Rules) provides in part,

‘(1) After the presentation of a petition for the winding up of a company by the court, upon the application of a creditor, or of an contributory, or of the company, and upon proof by affidavit of sufficient ground for the appointment of an interim liquidator, the court, if it thinks fit and upon such terms as in the opinion of the court shall be just and necessary, may make appointment.

(2) The order appointing the interim liquidator shall bear the number of the petition, and shall state the nature and short description of the property of which the interim liquidator is ordered to take possession, and the duties to be performed by the interim liquidator.’

8. Neither the statute nor the rules made thereunder, detail the situations that would warrant the appointment of an interim liquidator. It appears though that the power to do is wide and unrestricted but must serve some purpose in furtherance of a legitimate objective. What can be gathered from English case law referred to by counsel is that a provisional liquidator may be appointed in obvious cases of insolvency or when the assets of the company are in jeopardy. See *Re Highfield Commodities Ltd*, [1984] 3 All E R 884. An interim liquidator may be appointed if it is in the public interest. See *Re Union Accident Insurance Co. Ltd* [1972] All E R 1105.
9. Rule 27 (2) of the Rules require that the order for appointment of the interim liquidator specifically states the nature and short description of the property the liquidator is ordered to take possession of and the duties to be performed by the interim liquidator. I presume that this information must be available on the application if the court is to mention it in the order it may issue. If this information, that is what property or properties the interim liquidator is to take possession of, is not disclosed on the affidavits of the applicant, the court would be unable to comply with this rule. Similarly, if the applicant does not articulate the duties that he proposes the interim liquidator should perform, the court is hand capped, as it cannot issue an order without detailing the duties the interim liquidator is to perform.
10. Mr. Ssekatawa, learned counsel for URA, submitted that this application was grounded in public interest, presumably given that what is at stake for URA is collection of taxes. Mr. Birungyi and Mr. Barata, learned counsel for the company submitted that no public interest had been made out to justify appointment of an interim liquidator. They

submitted that the liquidator that would be appointed on the main petition was capable of carrying out all the functions of the interim liquidator which URA wanted.

11. This application fails to show that there are any assets of the company that are in jeopardy or assets that the interim liquidator should be ordered to take possession of anyway. On the contrary its thrust seems to be that the assets of the company have already been dissipated, dispersed, or otherwise dealt with. No particulars of these assets are provided. The immediate task for an interim liquidator is to protect assets of the company, or the public interest, in case the company is being used to hurt public interest. It would appear in this case there are no assets to protect; at least none are disclosed by this application.
12. Mr. Ssekatawa, in his address to court, relied on the public interest as the ground for appointment of an interim liquidator. This ground was not articulated in the chamber summons or supporting affidavit. Mr. Ssekatawa does not show the public interest issues at stake here save presumably that the URA is engaged in collection of tax revenue. It is not demonstrated how the appointment of an interim liquidator will protect the recovery of tax obligations due from the company to URA. All, this court is told, is that URA is conducting an investigation into the financial affairs of the company, and URA would like an interim liquidator appointed, pending its finalisation of its investigations. This request is open ended. It is not clear what would be the purpose of appointing an interim liquidator given that URA is conducting its own investigations which could well go ahead, along side the winding up process.
13. By the very nature of the office of an interim liquidator he or she has a very limited role in between the presentation of the petition and the making or refusal of winding up order. The duties of the interim liquidator must clearly be set forth in the order appointing him. For this to be done, the applicant should have made mention of the duties the interim liquidator was to perform in this period. This application has not done so.
14. URA has failed, in my view, to show that there is justification at this stage in the proceedings to appoint an interim liquidator. Accordingly I dismiss this application with costs.

Dated at Kampala this 14th day of October 2005

FMS Egonda-Ntende
Judge