

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
IN THE MATTER OF K.R.K INVESTMENTS LIMITED [A DISSOLVED
COMPANY]
COMPANY CAUSE NO. 26 OF 2019
AND
IN THE MATTER OF AN APPLICATION
BY
NILESH RASIKBHAI PATEL [LIQUIDATOR]

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

1. The applicant brought this suit under section 79, 84 and 117 of the Insolvency Act, section 33 of the Judicature Act, section 98 of the Civil Procedure Act and Regulations 202, 203 and 204 of the Insolvency Regulations.
2. The applicant as the liquidator sought for orders that the land comprised in Leasehold Register, Volume 467, Folio 20, Plot No. 152, Sixth Street, Kampala registered in the names of KRK Investments Limited be distributed among the persons entitled to under the liquidation of the company and that the land be vested in Ravi Patel and Kiritkumar Rasiklal Amin the executor of the last will and testament of the late Thakore Vallabhbhai Patel as tenants in common in equal shares.
3. By special resolution dated 28th July 2016 annexed as “A” to the affidavit in support of the application, the shareholders of KRK Investments Limited herein after referred to as the dissolved company resolved that the company be dissolved and that Nilesh R Patel be appointed the liquidator.

4. The appointment of the liquidator was under section 62 of the Insolvency Act and he carried out his duties as liquidator, prepared an account of the liquidation, showing how the liquidation was conducted and how the property of the company was disposed of. He filed a return of the final account with the official receiver who certified the dissolution of the dissolved company.
5. After the company had been dissolved, Ravi Patel a former shareholder/director in the dissolved company filed against the liquidator at the Uganda Registration Services Bureau challenging the process of the liquidation of the dissolved company that he had omitted to distribute the dissolved company's land comprised in Leasehold Register Volume 467, Folio 20, Plot 152 Sixth Street, Kampala.
6. On the 14th December 2020, Martha Nalubowa Birungi an officer from the Official Receiver's department confirmed in court that there were no outstanding creditor claims against the dissolved company.
7. Since the applicant was functus officio he applied to court to for an order to transfer and vest the land to those entitled to benefit from it before the company was dissolved these being the shareholders; Ravi Patel and late Thakore Vallabhbhai Patel.
8. However, during the pendency of the liquidation process, a former shareholder/ director of the company the late Thakore Vallabhbhai Patel passed away. His estate was vested in Kiritkumar Rasiklal Amin, the executor of the last will and testament. The applicant thereby sought that the land be vested accordingly.

The applicant was represented by *Mr. Byamugisha Albert* whereas the Official Receiver was represented by *Ms. Naluboowa Martha Birungi*.

The applicant was ordered to file its submissions where in only raised one issue for determination before this court

Issue:

How should the land comprised in Leasehold Register Volume 467, Folio 20, Plot 152, Sixth Street, Kampala that belonged to the dissolved company be dealt with?

The Applicant submitted that section 67 (1) of the Insolvency Act provides that as soon as the company is fully liquidated, the liquidator shall prepare an account of liquidation showing how the liquidation was conducted and how the property of the company was disposed of. He further stated that section 79 of the Act provides for the preferential payments to be applied in satisfaction of its liabilities among the members according to their rights and interests in the company.

Counsel submitted that the liquidator is now functus officio and cannot distribute the land among the former shareholders of the dissolved company. counsel relied on section 84 (1) and section 117 (2) of the Insolvency Act that gives court wide powers to exercise power which will be just and beneficial after the removal of the company from the company register. He noted that the effect of the order sought in this application requires the resuscitation of the dissolved company which would require that the first and final liquidation and distribution account be set aside and redrafted with accordance with the eventual outcome of this application.

He therefore prayed that the land comprised in the leasehold Register, Volume 467, Folio 20, Plot No. 152, Sixth Street, Kampala registered in the name of the dissolved company be distributed among the persons entitled under the liquidation of the dissolved company and that the land be vested in Ravi Patel and Kiritkumar Rasiklal Amin, the executor of the last will and testament of the late Thakore Vallabhbai Patel as tenants in common in equal shares.

Analysis

It is very clear that on the 28th of July, 2016, the members by way of special resolution caused a voluntary winding up of the KRK Investments Limited where by the applicant Mr. Nilesh R Patel was appointed as the liquidator for purposes of winding up of the company and having it dissolved.

All the necessary requirements for the winding up and dissolution of the company were complied with under the Companies Act, 2012 and the Insolvency Act, 2011 and final returns of the account as required thereunder upon winding up were filed on the November 13, 2018. The company was dissolved and thereby struck off the company register.

However, it is very clear from the evidence that the land comprised in leasehold Register, Volume 467, Folio 20, Plot No. 152, Sixth Street, Kampala is still registered under the names of the dissolved company K.R.K Investment Limited. **Section 59 of the Registration of Titles Act** provides that a certificate of title is conclusive proof of ownership. See; **Jobbingfield Properties v Ssemanda; Civil Suit No. 41 of 2008.**

The official receiver was invited before this court to ascertain whether there are any pending issues regarding the company and she clearly informed court that all matters in respect of the said company had been resolved. It is thus clear that only this property was not distributed and still lies in the name of non-existent person.

The applicant sought that the said land be vested in the former shareholder of the company this being the late Thakore Vallabhchai Patel who vested his estate in Ravi Patel and Kiritkumar Rasikal Amin as the executor of the his last will and testament.

When a company is wound up this means it is officially closed down, its assets and liabilities are dealt with, and the business removed from the register held at Companies House. As part of this process, all assets the company has will be liquidated. This means they will be sold with the aim of realising as much money

as possible which can then be used to pay the company's outstanding creditors, or in the case of a solvent liquidation, this money will be distributed among the shareholders.

Section **79 of the Insolvency Act** provides for the distribution of the property of a company subject to the provisions of this Act on preferential payments in satisfaction of its liabilities simultaneously and equally and upon satisfaction be distributed among the members according to their rights and interests in the company. I am satisfied that there are no outstanding liabilities against the company as all these were settled upon dissolution. This therefore leaves the remaining property to be distributed between the members of the company who in this case is the late Thakore Vallabhbhai Patel.

The estate of the late Thakore Vallabhbhai Patel was indeed vested in Kiritkumar Rasikal Amin. Under **Section 117 of the Insolvency Act**, this court is vested with the powers to exercise in its jurisdiction any matter occurring after the commencement of the liquidation or the removal of the company from the register, whether or not the liquidator has ceased to act as liquidator when the application or the order is made.

When a company is dissolved, all its assets pass to the state or official receiver and are known as *bona vacantia* (ownerless property). Such property may either be claimed back or get its assets from the dissolved company by getting a court order to restore the company or applying for a discretionary grant by any persons connected to the dissolved company to court to recover the asset and take full benefit.

I therefore find that the land comprised in Leasehold Register, Volume 467, Folio 20, Plot No. 152, Sixth Street, Kampala registered in the name of KRK Investment Limited be distributed and vested in Ravi Patel and Kiritkumar Rasiklal Amin, the Executor of the last will and testament of the late Thakore Vallabhbhai Patel.

This application is allowed with no order as to costs.

I so order.

SSEKAANA MUSA
JUDGE
18th March 2022