

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 467/1995

PEOPLES TRANSPORT CO. LIMITED.....PLAINTIFF -
VERSUS-
AFRIC CO-OPERATIVE SOCIETY LIMITED.....DEFENDANT

BEFORE THE HON.MR. J.H. NTABGOBA - PRINCIPAL JUDGE

RULING:

The plaintiff in this case which is Peoples Transport Company, Limited in Receivership was put under receivership on 10/6/94 for the purposes of winding it. up pursuant to the provisions of the Public Enterprises Reform and Divestiture Statute (No. 9 of 1993) . To appreciate what was done to the Company one needs to read the short summary of the Statute as follows:-

“A Statute to provide for the reform and divestiture of public enterprises, to establish the Divestiture and Reform Implementation Committee charged with the implementation of the Government programme on the matter and for other related matters.”

The overall objective of the Statute can be stated simply and in short as to divest the Government of its role in running business and vest it in Commercial or business concerns other than the Government. In common parlance then when a public enterprise (read Government enterprise) is divested under the Statute it becomes private, meaning it becomes owned by proprietors (or proprietor) other than Government S. 25(2) of the Statute stipulates : -

“Where a public enterprise is subject of divestiture under Class II, III or IV of the first schedule to this Statute and the enterprise is riot already a public limited liability company under the Companies Act, the enterprise shall be registered as a public limited liability company under that Act for the purpose of effecting the divestiture with the respective shareholding prescribed by S.20 of this statute.”

The plaintiff happens to be subject to divestiture under Class IV of the first schedule to the Statute. It is an enterprise to be divested by the state fully. It is listed down in the schedule as number 23. According to 5.20 of the Statute “as to the enterprise specified in Class IV of that schedule, the state shall totally divest itself by disposal of all the shares in each enterprise to persons other than the state in accordance with this statute.”

S.21 provides the modes of actual sale and transfer of public enterprises and, the Divesture Account on which the sale proceeds are deposited “shall be used for promoting Ugandan entrepreneurs for industrial development”. But such sale proceeds may also be used pursuant to S.23 of the Statute:-

- “(a) to pay off-debts, if any, or otherwise compromise with the creditors of the public enterprise;
- (b) compensate or otherwise provide for employees who are laid off as a result of divestiture;
- (c) do anything necessary to attain the most favourable conditions for divestiture.”

Suffice it to say that an enterprise that has been declared subject of divestiture becomes an object for sale, or, to use the common language, a commodity on the market. It follows that the receivers appointed to manage it must necessarily liquidate it.

To liquidate it, it must, if not yet, be transformed into a public limited liability company. In my view then it would be a contradiction in terms to say that the purchaser of the assets of a company who wishes to purchase so as to liquidate such company is concluding the purchase agreement with the same company. I tend to agree with Mr. Odime learned Counsel for the defendant when he says that the parties to be sued should be either the Government or its appointed liquidators who would be sued as the agents of the government.

There is another leg to Mr. Odimbe's argument. S.25(2) provides that before an enterprise is divested, if it be a private limited liability company, like the plaintiff in the instant case it must first be converted to a public limited liability company. And I agree with Counsel that the presumption here, if not rebutted, is that the plaintiff was so converted. It cannot be said that 5.25(4) was disobeyed which directs that the Registrar of Companies "shall give every assistance for expediting the registration of a company, the establishment of which has become necessary by reason of any provision of this Statute."

The presumption, I agree, is that S.25 (4) was complied with. The point Mr. Odimbe made is that between the time of the appointment of the receivers and the negotiation of the sale between such receivers and the defendant of the plaintiff's assets, the plaintiff's personality and character had so changed that we cannot be talking of the original private limited liability company. The process of divestiture starts with converting the private limited liability company to a public limited liability company. The process ends when the receivers and managers submit their final report. But its important to note that the receivers and managers did not negotiate the sale of the company (whichever, whether the private one or the new public one). They negotiated the sale of the property of the private turned public company. Once the company was divested it ceased to be. A nonexistent company could not sue or be sued.

I think there are sound reasons for the support of Counsel Odimbe's preliminary objections on a legal point that the suit was instituted by a non-existent plaintiff.

I agree the suit was thereby misconceived and I strike it out with costs o the defendant.

6/12/96