

g. Registrar

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.434 OF 1989

21st May 1990

IN THE MATTER OF CENTRAF ASSOCIATES LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT, 1984

PETITION FOR WINDING UP

CORAM: UNYOLO, J.

Chirwa, Counsel for the Petitioners
Jussab, Counsel for other Judgment Creditor
Kadyakale, Official Interpreter
Phiri, Court Reporter



O R D E R

This petition relates to a company known as Centraf Associates Limited, hereinafter referred to as "the company". It has been brought by the Registered Trustees of the Tobacco Association of Malawi, hereinafter referred to as "the petitioners", as creditor of the company under the provisions of the Companies Act, 1984 and what is sought is a court order winding up the company on the basis that it is unable to pay its debts.

From the affido sworn in support of the petition and also from what was said at the bar, the following facts emerge: The company is indebted to the petitioners in the sum of K3,046.56 being the amount of a final judgment obtained by the petitioners against the company in this very court on 24th August, 1988, being Civil Cause No.582 of 1986 plus costs which were taxed at K3,200.00. In other words, the company's total indebtedness to the petitioners stands at K6,246.56. "JMCI" and "JMC9" are the relevant supportive exhibits on this aspect. Several letters were soon thereafter sent out requesting the company to pay the debt but without avail. A warrant of execution was issued but the same was returned unexecuted as the sheriff officer could not trace the whereabouts of the company or its officers. Several other letters were addressed to the company's legal practitioners but they too failed to locate the officers of the company. It is not that this was a fictitious company. It wasn't that. The company was actually incorporated under the laws of Malawi on 17th June, 1978 with a nominal share capital of K10,000.00 and its objects covered a wide spectrum of business activities. The petitioners then instituted the proceedings here. To this day the debt has not been liquidated, not even a single payment has been made.


There was then this development in the case. In accordance with rules of procedure the petitioners caused notices to be placed in the local newspapers requesting any other creditor(s)

of the company who intended to oppose or support the petition to appear before the court at the hearing of the petition. Air Malawi Limited made an appearance. Learned Counsel informed the court that the company was also indebted to Air Malawi in the sum of K4,331.50, also upon a judgment debt and costs, which debt remains unpaid. Learned Counsel informed the court further that his clients, Air Malawi, support the petition. There were no other appearances. The company does not appear to oppose the petition. It is on these facts that the petitioners have come to move the court to sanction the winding up of the company.

Referring to the law, section 213 of the Companies Act empowers the court to order the winding up of a company if it is proved to the court's satisfaction that the company is unable to pay its debts; regard being had to the contingent and prospective liabilities of the company. The matter is discretionary really. I have given the matter considerable thought. Several things can be said. First, the debt in the instant case is quite substantial and as already indicated the same is not disputed in any way. It is also to be noted that the company has not tendered any payment at all. And, finally, nobody has come forward to oppose the petition. I can therefore find no reason for refusing to grant it.

It is therefore the order of the court that the company be wound up under the relevant provisions of the Companies Act, already mentioned. The Court further orders that the costs of the petitioners and the supporting Creditor, namely Air Malawi Limited, be taxed and paid out of the assets of the company.

PRONOUNCED in open Court this 21st day of May, 1990 at Blantyre.


L.E. Unyolo
JUDGE