



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MISCELLANEOUS CIVIL CAUSE NUMBER 98 OF 2006**

**IN THE MATTER OF CSC DESIGN AND BUILDING COMPANY  
LIMITED**

**AND**

**IN THE MATTER OF THE COMPANIES ACT, CAP 46:03 OF THE LAWS  
OF MALAWI**

**Coram: Justice M.A. Tembo,**

Manda, Counsel for the Petitioner  
Jere and Mpaka, Counsel for Parties supporting the Petition  
Respondent, absent  
Chitatu, Official Court Interpreter

**JUDGMENT**

This is this court's judgment following a hearing of this matter before my late brother Judge who passed on before delivering judgment in this matter.

This judgment follows the petition of four creditors of the respondent company, the CSC Design and Building Company Limited, for the winding up of the said company for its failure to pay debts owing to the said creditors. The petition is taken out in terms of the provisions of section 213 (1) (d) of the Companies Act. The petition was heard and the respondent company did not attend the hearing or make any appearance at all despite being served with a notice of the petition. That left the evidence of the petitioners uncontroverted.

The CSC Design and Building Company, the respondent company herein, was incorporated under the Companies Act with registered offices at Nyambadwe in Blantyre. The objects for the establishment of the respondent company are unrestricted. The petitioners were unable to say what the nominal or issued capital of the respondent company is because the Registrar of companies had then misplaced records of the respondent.

The petitioner is General Tinsmith Limited. There are three parties supporting the petitioner's petition namely, Shire Limited, SAAD & Company and Chrystalline Civil Engineering. The petition for winding up was advertised in the Nation Newspaper and Daily Times on 14<sup>th</sup> August 2006 and 15<sup>th</sup> August 2006 respectively. The petition arises out of the respondent company's failure to settle a debt it owed to the petitioner General Tinsmith Limited in the sum of K1, 104, 981.87 as at the date of the hearing of the petition herein. The petitioners served the respondent company with a 21 day statutory notice of winding up but at the date of hearing of this petition before my late brother Judge the respondent had not paid the debt owing. In these circumstances, the petitioner prayed for this Court to find that the respondent company had failed to settle its debts and that therefore be wound up. The petitioner further prayed for the appointment of a receiver and for costs of this petition.

The three parties who support this petition were similarly owed varying sums of money by the respondent company as at the date of the hearing of the petition herein. Shire Limited was owed K1, 062, 564.20. SAAD & Company was owed K1, 518, 725.08. The three creditors to the respondent company herein support the petition herein.

The issue for determination is chiefly whether on the facts on this petition the respondent company can be said to be unable to pay its debts.

The law was properly outlined by the petitioner in its skeleton arguments. This Court has power to order the compulsory winding up of a company. See section 204 (1) (a) Companies Act. Further, a company may be wound up under an order of the court on the petition of any creditor of the company. See section 212 (1) (b) Companies Act. The Court may order the winding up of a company if the company is unable to pay its debts. A company is deemed to be unable to pay its debts if the

creditor to whom the company is indebted in a sum exceeding K100 then due has served on the company a written demand under his hand requiring the company to pay the sum so due, and the company has for 21 days thereafter neglected to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor. See section 213 (3) (a) Companies Act. A company is also deemed to be unable to pay its debts if it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts the court shall take into account the contingent and prospective liabilities of the company. See section 313 (3) (c) Companies Act.

The fact that the petitioner has made repeated applications for payment, and the company has neglected the same, affords cogent evidence that the company is unable to pay its debts. See *Palmer's Company Law* 21<sup>st</sup> edition, p738. A petitioning creditor who cannot get paid a sum presently payable has, as against the company, a right ex-debita justitiae, to a winding up order. See *Re Amalgamated Properties of Rhodesia (1913) Ltd* [1917] 2 Ch. 115.

This Court is convinced that the respondent company herein owes the sums claimed and has failed to pay the said sums despite being given the requisite statutory notice in so far as the relevant law at the time of this petition is concerned. The grounds for ordering the winding up of the respondent company have been made out by the petitioner as supported by the three creditors of the respondent company herein. Consequently the petition is granted with costs to the petitioner.

The official receiver is appointed to supervise the winding up process herein.

Made in open court at Blantyre this 17<sup>th</sup> September 2014.

M.A. Tembo  
**JUDGE**