

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
COMPANY CAUSE NO. 25 OF 2018
IN THE MATTER OF SUNSHINE AGRO PRODUCTS LIMITED
AND
IN THE MATTER OF THE INSOLVENCY ACT 2011

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This petition is brought under the Insolvency Act Section 139 and regulation 135 of the Insolvency regulations 2013, SI 36 of 2013.

The applicant was represented by Rutisya Paul.

The petitioner is seeking orders;

- a) That no steps should be taken to enforce any charge over any of the company's property by any of the Company's secured or unsecured creditors until the end of the Provisional Administration.
- b) That no proceedings, execution or other legal process shall be commenced or continued and distress shall be levied against the company or its property until the end of Provisional Administration or such period as the Court shall deem fit.
- c) That no other transaction shall be carried out in respect of any registered or unregistered property of the company until the end of the Provisional Administration or such period as the Court will deem fit.

The main grounds for this application are;

- a) That the objective of the company is to promote farming as a business and it focuses on transforming small holder agriculture from subsistence to commercial farming. In implementing its objectives, the company organizes farm groups, provides them with training and extension services carried out full time in House Agronomists and field officers, provides seeds and seedlings to farmers free of charge and provides in-kind loans for Farm inputs such as pesticides, fertilisers and solar driers.
- b) That the company obtained a revolving line of credit in the amount of USD 250,000 on the the 24th day of September, 2013 which was to be used to purchase, process and export Bird's eye chilli produced by small scale farmers in rural Uganda with a maturity date of 1st August 2014 which was by subsequent amendments to the loan Agreement.
- c) That Root Capital has disbursed only USD 125,000 out of the principal amount of USD 250,000 and USD 28,700 has been repaid.
- d) That the company obtained another loan facility on the 2nd of September, 2014 in the amount of USD 480,000 with a maturity date of 1st April 2019. This loan was to be repaid in five equal instalments of USD 96,000 of the principal interest starting on 1st April, 2015 till 1st April 2019.
- e) That this was secured by a legal mortgage executed by Pamela Anyoti, a director in the Company over registered property of comprised in Mengo, Mawokota, block 366, Plot 3 at Namal Lubira (Bunjako) together with all developments thereon, debenture over all current and future assets of Borrower and Director's personal guarantees.

- f) That by an amendment dated October 14th, 2014, the security under the term loan agreement was amended to only require a personal guarantee from Anyoti Peronaci.
- g) That subsequently by a 2nd and 3rd amendment of the loan Agreement, the maturity date of the loan was extended to January 1st 2020 and to January 1st 2021.
- h) That the droughts in 2014, 2015 and 2016 heavy rains at the end of 2015 affected the volumes of chilli production with very little chilli produced by farmers. At the same time, Market failure in 2017 distorted market prices, delays in disbursements of funds also affected different stages of planned project development which has prevented the Company from being able to meet its loan repayment schedules.
- i) That due to the numerous challenges faced by the company in chilli production which has led to default on its payment obligations, the company has been served with a statutory under the Mortgage legal regime by Root Capital requiring it to comply with repayment schedules under the respective Agreements which it alleged to have resulted in outstanding loan balances of USD 134,772.40 under the revolving loan agreement and USD 374,156.31 under the term loan Agreement.
- j) That the Company took out other loans with Rabo Bank Foundation and AECF all of which it is unable to pay at the moment due to constraints in cash flow.
- k) That the Company has total assets of Ugx 2,491,875,266 and liabilities of Ugx 3,897,117,338.
- l) That the Petitioner had a net loss of Ugx 685,976,913 in the Financial Year 2017 and will be unable to pay its debts.

m) That the Company has by Special resolution agreed to make a settlement with the creditors of the Company.

n) That the company has appointed a Provisional Administrator and the Provisional Administrator has consented to the appointment.

The petitioner's counsel submitted that the petitioner was served with a statutory notice of default and therein they stated that they will not notify me again regarding this default nor will it enlarge the time within which you are required to rectify the same. The petitioner will lose its property as stated in that default letter.

The petitioner's counsel further contended that the petitioner company demonstrates and acknowledges indebtedness and has made a settlement of its obligations with creditors.

In the case of ***Uganda Telecom Limited vs Ondoma Samuel t/a Alaka and Company Advocates Miscellaneous Application No. 0012 of 2018***; Justice Stephen Mubiru noted;

“that Under Section 140 of the Insolvency Act 2011, it is evident that provisional administration is a rescue mechanism for the insolvent companies which allows them to carry on running their business, in order to stabilise the company's position and maximise its chances of continuing in business as an alternative to liquidation or a precursor to it. A company seeks provisional administration with the aim of;-ensuring its survival and whole or any part of its undertaking as a going concern, or securing a more advantageous realisation of its assets than would be affected in a liquidation. The procedure designed primarily to deal with situations when there is an urgent need to protect the value of a business from enforcement action by unpaid creditors. It is designed to forestall action or obtain a memorandum by having an administrator appointed. If, however, it is not possible for the company and its business to continue in existence, the administrator's task is to ensure a better return for the

company's creditors and members than would result from an immediate winding up of the company."

Provisional administration provides breathing space to achieve a turnaround or structured exit and is designed to hold a business together while plans are formed either to put in place a financial restructuring to rescue the company, or to sell the business and assets to produce a better result for the creditors than a liquidation. Therefore, according to section 143(1) of the Insolvency Act, provisional administration puts an immediate ring fence around the company and its assets so that no creditor can start or continue any action to recover their debts.

It is good for creditors as a whole because it will result in a higher return than liquidation would cause the business to be saved thereby making it more valuable.

The petitioner has satisfied court that it is necessary to appoint a provisional administrator in order to save the company from liquidation and also protect the interests of the creditors.

The provisional administrator's duties are set out in *Section 140 of the Insolvency Act*, but the overall objective is to protect the interests of the company and its creditors. It is the Provisional Administrator's responsibility to take into consideration the interests of the creditors when taking into consideration the interest of the company.

Court is satisfied from the evidence availed to it that there is need to appoint ***Okia Micheal*** as Provisional Administrator for a period of thirty days.

It is so ordered.

SSEKAANA MUSA
JUDGE
25th/09/2018