**Mbaki and others v Macharia and another**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 16 September 2005

**Case Number:** 178/02

**Before:** Tunoi, O’kubasu and Waki JJA

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*[1] Company law – Winding-up petition – Summary hearing of a winding-up petition – Provisions of the*

*winding-up rules in relation to summary hearing of a petition – Effect of such summary hearing of the*

*petition.*

**Editor’s Summary**

The respondents petitioned the High Court for the winding up of Terrace Hotels Limited, arguing that it was just and equitable to wind up the company for various reasons. The Commissioner of Assize, apparently without hearing any of the parties, ordered the company to be wound up and appointed liquidators. The appellants appealed saying that there was no factual or legal basis for the winding-up order and that it was irregular for the Commissioner to conduct the proceedings by denying them a right to present their case and in failing to write a judgment according to the provisions of the Civil Procedure Act and Rules.

**Held** – The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard. (*Matiba v Attorney-General* [1995-1998] 1 EA 192 followed) There is nothing in the Company’s Act or the Winding-up Rules made thereunder, which donates the power to the court to determine a winding-up petition summarily. Nor was there any application before the court seeking such summary determination. The court’s order was clearly made in the presence of the parties’ advocates on a date fixed for the hearing of the petition but without giving them an opportunity to be heard. Consequently, the order made in such circumstances cannot be sustained and is for setting aside. Appeal allowed.

**Case referred to in Judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)