**Re Kahawa Sukari Ltd**

**Division:** Milimani Commercial Courts of Kenya at Nairobi

**Date of ruling:** 7 March 2003

**Case Number:** 23/02

**Before:** Ringera J

**Sourced by:** OP Nagpal

**Summarised by:** M Kibanga

*[1] Companies Act – Member of a company – Who constitutes a member of a company – Section 211 –*

*Companies Act (Chapter 486).*

*[2] Company law – Grant of letters of administration of estate of a deceased member – Failure of the*

*administrator to be registered as a member – Whether the administrator member by virtue of the grant.*

*[3] Company law – Petitioner with grant of letters of administration* ad colligenda bona *in respect of the*

*estate of a deceased member – Whether the petitioner a member by virtue of the grant – Section 211*

*Companies Act (Chapter 486).*

**Editor’s Summary**

The petitioner was the son of one Paul Mungai (deceased) who was a director and shareholder of a company known as Kahawa Sukari Limited together with three others as its inception in 1982. In 2000 one of the directors, Laban Muiruri Kimungu, died and his widow was made a director and signatory of the company’s account pending her obtaining letters of administration of her deceased husband’s estate. The petitioners family requested the directors to make the petitioner a director of the company. The directors advised the family to first obtain letters of administration of the estate. The petitioner obtained a grant of administration *ad coligenda bona* which did not state the purpose for which it was issued, and informed the company but the directors still refused to transfer his father’s shares to him. The petitioner consequently filed this petition under section 211 of the Companies Act seeking orders that he be made a director and signatory of its accounts; he be made available records of sales of the company from its inception or in the alternative; he be supplied with its audited accounts, he be supplied with its audited accounts and an injunction to restrain the directors from setting plots and its accounts be frozen pending their compliance with the Court order. The petitioner then took out a chamber summons restraining the respondent from selling or disposing of the property belonging to the respondent and from operating its bank accounts. The company also filed an application to restrain the petitioner from advertising the petition. Both applications were argued together. It was argued for the company that the petitioner did not have *locus standi* to file the petition under section 211 and that the conditions for grant of an injunction were not satisfied.

**Held –** A grant *ad colligenda bona* which did not state the purpose for which it was granted was void *ab initio* and incurably defective. A grant of letters of administration intestate is not sufficient to constitute the petitioner a member of the company under section 211 of the Companies Act. A person who obtains grant *ad colligenda bona* is not a representative of the estate of the deceased until he obtains a full grant. Even a person with a full grant cannot be treated a member of a company until he is entered in the register of members; *Re Jeryrn Street Turkish Baths Limited* [1970] 3 All ER 57 distinguished*, Re Meyer Douglas Pty Ltd* [1965] VR 638 approved. *Orbiter dictum*, the petitioner would have made out one of the conditions for relief under section 211, if he had the *locus standi*, because of the discriminatory manner in which the petitioner had been treated. The dwindling nature of the company’s assets would have exposed the petitioner to the risk of financial injury and on a balance, an interlocutory injunction would have been granted. Application for injunction was dismissed. Application to stop advertisement was allowed. Each party to bear its own costs. **Cases referred to in ruling**

(“**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)

***Australia***

*Re Meyer Douglas Pty Ltd* [1965] VR 638 – **C**

***United Kingdom***

*Re HR Harmer Ltd* [1958] 3 All ER 689 – **C**

*Re Jeryrn Steet Turkish Baths Ltd* [1970] 3 All ER 57 – **D**

*Scott v Scott (London) Ltd* [1940] 3 All ER 509

**Ruling**