**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).*

**RULING**

**RINGERA J:** Geoffrey Murihia Muigai, the petitioner herein, is the son of the late Paul Muigai.

Sometime in 1982, the late Paul Muigai together with three others, namely, Laban Muiruri Kimungu,

Edward Rurii Kanjabi, and Stephen Benson Mbugua incorporated a company called Kahawa Sukari

Limted (hereinafter called “the company”). The four were the only shareholders and directors of the company and they were all signatory to the company’s accounts. Each had a stake of 25% shareholding in the company. The company acquired a property known as land registration number 10901/20 and subdivided it into 3 479 plots for sale. The scheme is called Kahawa Sukari Estate. The main business of the company is to sell those plots to willing buyers. The company is also said to own a subsidiary firm known as membley which is said to be the proprietor of another property known as land registration number 10901/46 which has also been subdivided into plots for sale. That ownership is disputed. On or about September 2000 Mr Laban Muiruri Kimungu died. His widow, Naomi Wambui Muiruri was subsequently admitted as a director of the company and made a signatory to the companies’ accounts. She was admitted a director on the representation that she had applied for a grant of letters of administration to her husband’s estate. Indeed the resolution of the board of directors made on 13 February 2001 was that Mrs Muiruri as the intended administrator be admitted into the board with powers to vote pending the issuance of and ratification by the grant of letters of administration. Then on 10 March 2002, Paul Muigai died. His family requested the directors of the company to allow the petitioner to join the board of the company as a representative of the deceased. The family was advised that it was necessary for a family member or several members to obtain letters of administration to the estate of the deceased. The petitioner applied for and obtained a grant of administration *ad colligenda bona*. He notified the company of the fact. Despite that notification he was not admitted to the board or made a signatory to the company’s accounts or otherwise made a representative of the deceased’s estate in the company. The petitioner also complains that even during the lifetime of his father the directors of the company had refused to accept his father’s transfer of his shares in the company to him. Feeling frustrated by what he felt to be unfair and discriminatory treatment by the directors of the company, Mr Geoffrey Murihia Muigai has filed a petition under the provisions of section 211 of the of the Companies Act seeking to be relieved of the oppression complained of therein. He seeks orders that he be made a director of the company and a signatory of its accounts, that he be availed records of sales of the company from its inception to date. In the alternative that he be supplied with audited accounts and an injunction to restrain the directors from selling or entering into agreements for sale of any further plots and the accounts of the company be frozen pending compliance with the other orders sought. After lodging the petition on 17 September 2002, the petitioner took out a chamber summons on 18 September 2002 in which he sought interlocutory injunctive relief. That application was amended on 19 September 2002 and is the subject of the present ruling. The relief sought is expressed in the following terms: “1. The respondents be restrained; by an order of injunction, from selling, or offering for sale, or otherwise disposing of, or attempting to dispose of (whether gratuitously or for consideration), any part of the assets of Kahawa Sukari Limited, including but not limited to the unsold plots in Kahawa Sukari Estate and membley housing scheme; and the said respondents be also restrained, by an order of injunction, from accepting, and/or receiving any monies from any party as consideration for the sale of any of the said assets and the respondents be further restrained, by an order of injunction, from executing any documents of transfer (or presenting or processing such documents for registration of any such transfers) pending the hearing and determination of the petition herein. 2. U nless with the express approval of and under the supervision of the Court, the respondents be restrained from drawing any cheques, or withdrawing any monies from the Kahawa Sukari Limited bank accounts, particularly account number 0102010671400 at Standard Chartered Bank Limited, Kimathi Street Branch, Nairobi, pending the hearing and determination of the petition herein”. The application is said to be made on the grounds that: (i) The respondents have despite request and after setting pre-conditions which have been satisfied by the petitioner, refused, failed or neglected to avail the company’s record to the petitioner. ( ii) The respondents have also refused, failed or neglected to appoint the petitioner as a director of the company, and to make him a signatory to the company’s accounts, thereby prejudicing the interest of the estate of the late Paul Muigai Wakabu in the company. (iii) The respondents, acting in collusion, and to the exclusion of the said estate, have continued to deal with the company’s assets, and to conduct its business, to the detriment of the estate of the said deceased. The company on its part filed an application on 1 October 2002 to restrain the petitioner from advertising the petition. Both applications were canvassed before me at considerable length by Mr *Kimani* Muhoro, counsel for the petitioner and Mr OP *Nagpal*, counsel for the company, on 7 November 2002, 17 December 2002, 16 January 2003, 29 January 2003 and 13 February 2003. From the nature of the arguments made, the principal issues for determination are first, whether or not the petitioner has *locus standi* to file the petition and consequently to seek injunctive relief, and, secondly, if he has *locus standi*, whether or not he has established a case for injunction on the usual principles. I think I should first deal with the issue of *locus standi*. Section 211(1) and (2) of the Companies Act (hereinafter called “the Act”) provides as follows: “211 (1) Any member of a company who complains that the affairs of the, company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (2) of section 170, the Attorney-General, may make an application to the Court by petition for an order under this section. ( 2) I f on a such petition the Court is of opinion: ( *a*) t hat the company’s affairs are being conducted as aforesaid; and ( *b*) t hat to wind up the company would unfairly prejudice that, part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up’ the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company’s affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction according to the company’s capital, or otherwise”. It was common ground that only a member of a company can petition for relief under section 211 of the Act. The dispute was as to whether the petitioner herein was a member of the company. The petitioner’s argument in summary form was to this effect. He had at the time he filed the petition a grant *ad colliqenda bona* in terms of section 67(1) of the Law of Succession Act (Chapter 160). That grant made him a personal representative of the estate of the deceased. According to article 29 of table A, (which is part of the company’s articles as it was not expressly excluded) in the case of the death of a member who was a sole holder of a shares(s) his personal representative shall be the only person recognised by the company as having any title to his interest in the share. And in the English case of *Re Jeryrn Steet Turkish Baths Ltd* [1970] 3 All ER 57 it was held that personal representatives of a deceased member of a company must be regarded as members of the company for the purposes of section 210 of the Companies Act of 1948. That provision is identical to section 211 of the Kenya Companies Act. The company’s argument as I understood it was this. The grant obtained by the petitioner was invalid because it did not indicate the purpose for which it had been issued and accordingly it did not confer any rights on the petitioner. Furthermore, the same had expired before the petition was lodged. In any case, even if it was a valid limited grant of letters of ‘administration *ad colligenda bona* it did not make the petitioner a shareholder of the company and accordingly he could not complain of being oppressed as a shareholder. The case of *Re Jeryrn Steet Turkish Baths Ltd* was distinguished on the basis that the companies’ articles in that case were different from the articles of the company herein. In particular it was pointed out that article 20 therein provided that the legal representative of a deceased member shall be recognised by the company as having title to the share whereas article 29 of table A herein stated that such a person would be recognised as having a title to the deceased’s interest in the share. I now turn to a consideration of these rival arguments. The grant issued to the petitioner was a limited grant of letters of administration *ad colligenda bona* under section 67(1) of the Act. It was issued on 18 June 2002. It was expressed to be for a period of three months. The usual words expressing the purpose for which it was issued, that is to say “collecting and getting in and receiving the estate and doing such things as may be necessary for the preservation of the same and until further representation be granted” were cancelled out. It is that cancellation which counsel for the company submits renders the grant invalid. Counsel for the petitioner on his part argued a grant *ad colligenda bona* is just that. It is a limited grant issued for collecting and getting in and receiving the estate. He did not think that the cancellation of the words in question was material. For myself, I agree with the submission of counsel for the company. The cancellation of the words in question, though a permissible amendment of the form prescribed for such a grant by rule 36(2) of the probate and administration rules by virtue of rule 70 had the effect of rendering the grant meaningless. It ceased to be a grant *ad colligenda bona* for collecting and getting in the estate. Having lost that character it became a wholly meaningless and incurably defective instrument. Now although it was renewed at the time the petition was filed and subsequently thereafter, the renewal could not render it valid. It was invalid *ab initio*. In those premises, even if a limited grant *ad colligenda bona* made the petitioner the personal representative of the estate of the deceased, Paul Muigai, and gave him a basis for being recognised as being entitled to the interest of the deceased in the shares in question, the grant that the petitioner obtained could do nothing of the sort as it was a defective one. That conclusion completely destroys the foundation of the petitioner’s claim to *locus standi* in this matter. Furthermore, even if the grant was a valid one, I am of the opinion that it would not have been sufficient to constitute the petitioner a member of the company within the meaning of section 211 of the Companies Act for the following reasons. First a grant of letter of administration *ad colligenda bona* cannot in my opinion confer on the grantee the status of a personal representative of the deceased. Under section 2 of the Succession Act, a personal representative is defined as “the executor or administrator of a deceased person. And administrator is in turn defined to mean a person to whom a grant of letters of administration has been made under the Act. To my mind, the grant of letters referred to can only be a full grant for a limited grant *ad colligenda bona* cannot and does not confer on the grantee the right to administer the estate of the deceased and accordingly such a grantee cannot be the administrator of the deceased within the meaning of the law. Secondly, in my opinion, even the holder of a full grant of letters of administration, who is truly the personal representative of a deceased shareholder is not and cannot be treated as a member of the company. Article 29 of table “A” makes him the person entitled to be recognised as having any title to the deceased’s interest in the shares. Such a person is not a member of the company? Section 211 does not define the expression. However, section 28 of the Act to which neither counsel drew my attention provides: “28 (1) The subscribers to the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members. ( 2) E very other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company”. From the above definition, it is apparent that a member of the company is such person as has been entered in the company’s register of members. Accordingly a personal, representative of a deceased member cannot *ipso facto* be regarded as a member of the company. He must first get his name into the register. Taking that view of the matter, I must respectfully decline to follow the *dictaum* the English case of *Re Jeryrn Street Turkish Baths Ltd* (*supra*) to the effect that even if a personal representative of a deceased member is not registered as a member of the company, he must be regarded as a member of the company for the purposes of section 210 of the English Companies Act of 1948 a diction which counsel for the petitioner placed considerable reliance. In taking that position, I am a little fortified – if fortification be necessary - by the fact that in the Australian case of *Re Meyer Douglas Pty Ltd* [1965] VR 638, a decision contrary to the one taken by the English court was taken and that Professor Gower seems to think that the Australian decision is more convincing. See *Gower’s Principles of Modern Company Law* (4 ed) at 668 note 84. Now, although the pertinent Australian law report is not available to me and I cannot therefore know what rational path the Court trod in arriving at its decision, I take comfort that I am not alone in not following the English decision. And for whatever it is worth let me emphasis that I have not declined, to follow *Re Jeryrn Street Turkish Baths Ltd* on the basis of the distinctions which counsel for the company sought to draw between it and the present case which I thought were distinctions without a difference but on my understanding of the import of section 28 of the Kenya Companies Act. It will be recalled that counsel had sought to distinguish between the expressions “title to the share” used in article 20 in that case and “title to the interest in the share” used in article 29 of table A. The two phrases are in my opinion synonymous but the latter is a more elegant expression in that a share is not a chattel to which one can have title but is strictly speaking a bundle of rights to which the shareholder has an interest. The upshot of my consideration of the issue of *locus standi* is that the petitioner was not a member of the company at the institution of the petition and the purtenant application for interlocutory injunctive relief and, accordingly, he had no *locus standi* to institute the proceedings. On this ground alone his application founders. Having arrived at the above firm conclusion, it is strictly not necessary to delve into the merits of the application. However, seeing that counsel spent considerable time canvassing the matter, I think I should in deference to their efforts deliver myself, albeit shortly, on that aspect of this matter. On the assumption that the petitioner is a member of the company, does he have a *prima facie* case with a probability of success at the trial? For one to get relief under section 211 of the Act, one must establish that: (i) The affairs of the company are being conducted in a manner oppressive to some part of the members (including himself). ( ii) The facts complained of would justify the making of a winding-up order on the ground that it would be just and equitable that the company should be wound up; and (iii) However, to wind up the company would unfairly prejudice that part of the members. The section is clearly intended to afford an alternative remedy to an oppressed minority. There was some dispute here as to whether the petitioner was a minority. I accept the submission on his behalf that he is a minority. To have 25% shareholding in a company even though that is equal to the holding of each of the other members is to be clearly a minority *vis a vis* the others combined. What determines whether one is a majority or a minority is the voting power. If ones voting power is less than the combined voting power of the other shareholders, one is a minority. Have the affairs of the company been conducted in a manner oppressive to him? In the leading English case of *Re HR Harmer Ltd* [1958] 3 All ER 689, it was held that within the context of section 210 of the English Companies Act of 1948, the words “oppressive” meant “burdensome, harsh and wrongful” and that the oppressive conduct complained of must affect the complainant(s) in their capacity as members of the company. The complaint here is that the directors of the company refused to accept the transfer of the deceased’s shares to the petitioner during the lifetime of the deceased, they have since the death of the deceased member refused to allow the petitioner to join the board of the company, or to be signatory to the company accounts, or otherwise to represent the estate of the deceased in the company. It is also complained that the company’s affairs are being run with less than probity and propriety in that tax and annual return are not being made, no accounts are being kept and no audits have been done and there has been no accounting of any sort to the estate of the deceased. In so far as the estate of the deceased is concerned, comparison is unfavourably drawn with the way the directors treated the family of Laban Muiruri Kimungu upon his death. His widow was appointed a director of the company upon her mere representation that she had applied for a grant of administration to his estate and even though in the event the grant she obtained was *ad colligenda bona* limited to payment of rates! She was also made a signatory to the company’s accounts. The petitioner contends that the treatment he has been subjected to is clearly discriminatory. The directors’ answer to the above complaints is this. In the case of the refusal to accept the transfer of the deceased shares to the petitioner during the lifetime of the deceased, they contend that it is the deceased himself who changed his mind and so notified the board orally at a meeting at which he presided. To that the petitioner responds that the minutes of the company show the deceased was asked to confirm his decision in writing but he never did so. As regards the refusal to admit the petitioner into the company or to appoint him a director and a signatory to the accounts, the directors maintain they are entitled to do so as long as the petitioner does not have a valid full grant of letters of administration duly confirmed and the matter is in any case in their discretion and they have a veto power. In the premises the petitioner is not entitled as of right to be registered as a shareholder let alone to be appointed a director. As regards non consultation with and non involvement of the estate of the deceased in the management of the companies’ affairs, they hold that they are not obliged by law or the articles to accommodate the estate of the deceased in that regard. As regards complaints of discrimination, they hold that they acted with propriety in admitting Mrs Muiruri to the board and making her a signatory to the accounts but even if they were wrong to do so, they are not obliged to perpetuate their error by according the petitioner similar treatment. And of course they deny want of probity and propriety in the management of the company’s affairs. To those answers, the petitioner has a reply. The articles of the company do not confer on the directors a veto to refuse to admit the personal representative of a deceased member as a shareholder of the company or to appoint him as a director; exclusion from participation in the affairs of the company was a violation of an obligation so basic that it would in itself justify the winding-up of the company; he is entitled to be treated in the same manner as Mrs Muiruri and in fact his case is better than hers as he had complied with the company’s request that he first obtain a grant of administration before seeking to be admitted to membership of the company; and that if the company had been submitting annual statutory returns as well as tax returns and if it had been producing audited accounts, nothing would have been easier than to annex such documents to the replying affidavits. I have considered all the above arguments. In my opinion the refusal by the company to register the share transfer from Paul Muiruri to the petitioner during the lifetime of Mr Muiruri cannot be a basis of relief under section 211 because it is not an act or omission which affected the petitioner as a member of the company. He could not as an unregistered transferee of his father’s shares be regarded as a member of the company. And as regards the refusal to admit the petitioner into the company as a shareholder, director, or signatory to the accounts, I agree with the submissions made on behalf of the company that the registration of any transfer of shares to any person other than an existing member and the appointment of a director are all matters in which the directors have according to the company’s articles of association a veto power. In that regard articles 7 and 8 of the company and articles 29 and 30 of the table A which have not been expressly excluded and are accordingly applicable are pertinent. They provide: “7. The directors may, in their absolute discretion and without, assigning any reason thereon, decline to register any transfer of a share (whether or not it is a fully paid share) to a person of whom they shall not approve, not being already a member of the company, and they may also decline to register the transfer of a share on which the company has a lien. 8. *S ubject to the provisions of the last proceedings clause*, any share may be transferred by a member to any child, or other issue, son, son-in-law, daughter, daughter-in-law, father, mother, brother, sister, nephew, niece, wife or husband of such member and any share of a deceased member may be transferred by his executors or administrators to any child or other issue, son-in-law, daughter-in-law, son, daughter, father, mother, brother, sister, nephew, niece, widow or widower of such deceased member may specifically have bequeathed the same, any share standing in the name of the trustees of the will of the deceased member may be transferred upon any change of trustees to the trustees for the time being as such will (*sic*). 29. I n case of the death of a member the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he was a sole holder, shall be the only person recognised by the company as having any title, to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons. 30. A ny person, becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, *but the directors shall in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death* or bankruptcy, as the case may be.” (emphasis added) Counsel for the petitioner relied on the proviso to article 32 of table A to contend that the directors had no veto power to decline to register a personal representative as a shareholder. Article 32 provides: “32 A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company. Provided always that the directors may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within three months the directors may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notices have been complied with”. It is plain to me that this article is concerned with the payment of dividends. It is not the article that governs the transfer of shares. The latter is governed by the preceding Articles 29 and 30 as read together with Articles 7 and 8. In that regard the wording of Article 7 expressly confers a veto power. And the transfer of shares whether *inter vivos* or on the death of a member are by dint of the opening words of Article 8 expressly subjected to such veto power. Article 30 is to the same effect the transmission of shares on death of a member is subject to the same limitations as apply during the life time of the member. I am accordingly unable to accept the submission that the directors do not have a veto power. In the case of *Scott v Scott (London) Ltd* [1940] 3 All ER 509. It is held that: “On general principles where the executrix has the legal right to the shares on which the deceased testator was the registered holder, in the absence of any power of veto conferred on the company by its articles of association, she is entitled to have her name entered on the register if she so desires as ancillary to her legal title to the shares in question”. That shows the primacy of the articles. And that is as it should be for the articles constitute the contract between members of the company *inter se* and between them and the company itself. Having taken that view of the matter can it be said that the directors conduct is oppressive to the petitioner? I am of the opinion that the refusal by the directors to register the petitioner as a shareholder being a matter within the discretion of the directors and indeed a matter on which they have veto power cannot on its own be said to be oppressive conduct and particularly so where, as here, the directors have not flatly refused to do so but have insisted on the applicant obtaining a full grant of letters of administration to the estate of the deceased member. As regards the refusal to admit the petitioner as a director and signatory to the account, again I can see nothing in the articles conferring on a personal representative to a deceased member such a right. So no right of the petitioner has been violated. On the contrary Article 12 contemplates that as long as there are at least two directors all would be well with the company. So no right of the petitioner has been violated. How about the treatment of the petitioner compared to that of Mrs Muiruri? I think there is no way the directors can explain and they have not explained to my satisfaction their preferential treatment of Mrs Muiruri. She had no better right than the petitioner to be admitted as a shareholder, a director and a signatory to the accounts of the company. I agree with the submissions made on behalf of the petitioner that looking at the history of this company it cannot but be viewed as a quasi-partnership where it was desirable to have a representation of each of the original subscribers or their personal representatives and where mutual respect and confidence were given a premium. I believe it is those considerations which led to the rapid absorption of Mrs Muiruri into the company soon after the demise of her husband. That was quite proper. The same considerations lead to the conclusion that the petitioner should have been accorded similar treatment. In my opinion, the directors treatment of the petitioner is tantamount to saying this: “although we did not use our discretion and veto against Mrs Muiruri, we are perfectly entitled to do so against you”. To that I can only say that whereas the directors legal right to do so is possibly unassailable, their conduct is manifestly discriminatory against the petitioner. Discrimination is not conduct merely devoid of legal basis. It is to afford different persons different treatment on the same facts. As the English say, what is sauce for the goose must be sauce for the gander. To treat the petitioner as Mrs Muiruri was treated is not to perpetuate an error but to accord two successors of deceased member’s equal treatment. The discrimination with which the petitioner has been visited is, I further venture to suggest, harsh and wrongful conduct which qualifies as oppression within the meaning of section 211. As regards the management of the company with want of probity and propriety, I agree with the submissions of the petitioner that if indeed the company had been filing annual returns or making regular tax returns or keeping audited books of accounts nothing would have been easier than to show copies thereof. In the premises, I think that the complaint about want of probity and propriety on the part of the directors is, on balance, made out. However, although such a consideration may be sufficient to wind up the company on the grounds that it may be just and equitable to do so, I cannot regard it as oppression of the petitioner’s rights as the entire membership of the company and not just one member or a part of the members only are affected. To summarise my consideration of the matter so far, I am of the opinion that the petitioner has *prima facie* made out one of the conditions for relief under section 211, namely that the affairs of the company have been conducted in a manner oppressive to him as a result of the discrimination to which he has been subjected. Would the facts proved justify the making of a winding-up order on the just and equitable grounds? I am of the tentative view that the facts of the discrimination and the want of probity and propriety in running the affairs of the company would justify the making of a winding-up order against the company on that ground in a winding-up petition. How would such an order impact on the petitioner? I think it would unfairly prejudice him. A winding-up of the sort of company here under consideration would not be in the best interest of any member including the petitioner. In short, I think the petitioners would have had a *prima facie* case with a probability of success at the trial if the issue of *locus standi* had been settled in his favour. In those circumstances I would have found that he had surmounted the first important hurdle in his quest for interlocutory injunctive relief. And I would have gone further to find that in all the circumstances the petitioner was exposed to a risk of injury which could not have been adequately compensated in damages given the dwindling nature of the asset base of the company and the fact that want of probity in terms of accounting made it difficult to contemplate that an award of damages would not be a writ written on water. In those premises, I would have been favourably inclined to grant interlocutory injunctive relief to the applicant. In conclusion let me state this. Although I think the petitioner has on the whole a good case for interlocutory injunctive relief on the merits, I am compelled to dismiss his application on the basis that he has no *locus standi*. In those circumstances and particularly considering my finding that the petitioner has been a victim of discrimination I think I am entitled to depart from the usual rule that costs follow the event. I order that each party bears its own costs of the application for injunction. As regards the company’s application to restrain the advertisement of the petition, the same must succeed in view of my finding that the petitioner had no *locus standi* to institute the petition. There will accordingly be an order that the petitioner be restrained from by himself or by his servants and/or agents from advertising or causing to be advertised the petition for winding-up the company in the Kenya *Gazette* or elsewhere or to take any further proceedings upon the said petition until further orders of the Court. And again I would order that each party bears its own costs of that application. Last but not least let me say this aside. While I accept the powerful submission by Mr *Nagpal*, counsel for the company, that a company is not to be managed on the basis of exhortations of mourners at a funeral and while I recognise that Mr *Kimani*, counsel for the petitioner, has, obviously on his client’s instructions said some rather unsavoury things about the directors of the company, I nonetheless express the hope that the company which was managed by the four founder members as directors and signatories of the accounts will in the very near future take such steps as will allow the petitioner, a son of one of the founder members to occupy his late fathers place in the board and in the management of the company. In that connection, I do hope that the petitioner, too, on his part will facilitate such action by obtaining a valid grant of letters of administration to the estate of his late father. I do hope that the directors will be gentlemen who can rise above any abuse that has been hurled their way and honour the wishes of their departed colleague and chairman. Until that happy day I am constrained to reiterate that the orders of this Court are that the application by the petitioner filed on 18 September 2002 is dismissed and the company’s application filed in court on 1 October 2002 succeed to the extent indicated hereinabove and that each party will bear their own costs of the two applications.

Orders accordingly.

For the petitioner:

*Mr Kimani Muhoro* instructed by *Kimani Muhoro & Co*

For the respondent:

*Mr OP Nagpal* instructed by *OP Nagpal & Co*