**Re Sheela Supermarket Ltd**

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

**Date of ruling:** 23 June 2004

**Case Number:** 54/00

**Before:** Azangalala AJ

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Company law – Winding-up – Procedure – Petition presented together with verifying affidavit –*

*Verifying affidavit not stamped by court – Preliminary objection raised as to validity of petition –*

*Whether petition complied with winding-up Rules – Rule 25 Companies (Winding-up) Rules.*

**Editor’s Summary**

The petitioner had filed the petition seeking winding-up of the company. The petition was accompanied by a verifying affidavit sworn on the 30 November 2000. The verifying affidavit was not stamped by the Court. No other affidavit had been filed subsequent to the filing of the petition. Counsel for Santowels Limited, one of the opposing creditors, raised a preliminary objection to the petition on grounds that the verifying affidavit was sworn and filed contrary to the provisions of rule 25 of the Companies (Winding-up) Rules which requires that the verifying affidavit be filed within four days after presentation of the petition. Counsel for the petitioner opposed the preliminary objection arguing that any defects were curable as the creditors would suffer no prejudice.

**Held** – The verifying affidavit was not sworn and filed in accordance with the provisions of rule 25 of the Companies (Winding-Up) rules and the result therefore was that the petition in this case had not been verified by an affidavit. The verifying affidavit was the *prima facie* evidence of the contents of the petition. In the absence of such evidence the petition would be struck out with costs for failure to comply with the provisions of rule 25 of the Companies (Winding-up) Rules.

**Cases referred to in ruling**

*JM Mugo Investments Company Ltd v Mathu and another* Nairobi High Court civil case number 192 of

2000 (UR)

*Jovenna East Africa Ltd v Onyango and others* [2002] LLR 2016 (CCK)