

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Company Case No. 07 of 2013

IN THE MATTER OF: CHIKO FARM PRODUCTS LIMITED

AND IN THE MATTER OF: THE COMPANIES ACT [CAP. 191]

Coram: Justice Aru

Counsel: Mrs. M.N. Patterson for the Petitioner  
Mr. T. Botleng for the Respondent  
Mr M. Hurley for the Respondent (National Bank of Vanuatu)

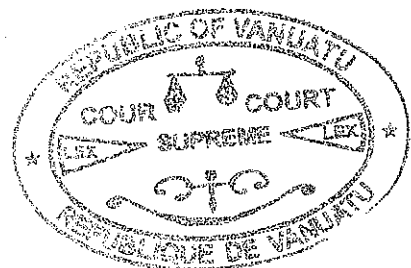
## JUDGMENT

1. The Petitioner, Mark Nutley applies for the Court to wind up Chiko Farms Products Limited (the Company). The petition is alleged to be founded on simple contract on the basis that the Petitioner has loaned funds to the Company totaling VT 28,916,687. It is alleged that despite a Notice of demand for payment issued on 23 October 2013, the debt remains outstanding.
2. Section 223 of the Companies Act [CAP 191] vests this Court with jurisdiction to wind up any company registered in Vanuatu. Section 224 sets out the circumstances under which a company may be wound up by the Courts and s 224 e) specifically provides that:

"224. Circumstances in which a company may be wound up by the Court.

A company may be wound up by the court if –

.....  
(e) the company is unable to pay its debts."  
.....



3. Section 227 provides for the Court's powers when hearing such a petition and subsection (1) states:

**"227. Powers of court on hearing petition**

- (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.
- .....

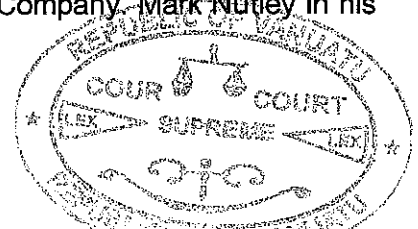
4. In support of the petition the Petitioner filed the following documents :

- Petition
- Sworn statement [Mark Nutley] verifying petition
- Further sworn statement [Mark Nutley] verifying petition
- Additional sworn statement of Mark Nutley ; and
- Additional sworn statement of Richard Nutley

5. The Company opposes the petition and denies that it owes the Petitioner the sum of VT 28, 916 687. It relies on two sworn statements filed by Ken Thode and its written submissions.

6. Having heard the parties on their submissions I make the following observations .Firstly, Chiko Farm Products was registered as a business name twice on 25 November 2011. A registration was made to Richard Nutley and Kenneth Wayne Thode as registered users and another registration on the same day was also made to Martz Nutley alone as registered user. There is no evidence before the court of any cancellation of either registration. The Company (Chiko Farm Products Limited) was incorporated as a local company on 9 February 2012.

7. As to the debt, there is no evidence before the court of any written contract / loan agreement or arrangement between the Petitioner and the Company. Mark Nutley in his

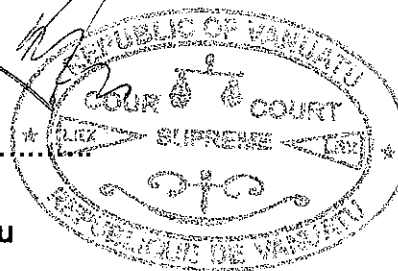


further sworn statement verifying the petition at paragraph 7 and 8 states that he took a loan and mortgaged his house for a sum of VT 27 million which amount was credited on the same day to the respondent company's account with Westpac as loan proceeds and annexes the bank statement as Annexure "MN3".

8. The bank statement annexed as Annexure "MN3" is for Chiko Farm Products and the account is in its name and the statement is addressed to Richard Nutley as Managing Director, Chiko Farm Products. Furthermore, the statement shows that on 28 February 2012 the Chiko Farm Products account was credited with VT 27 million. Although the respondent Company had been incorporated by then (on 9 February 2012), it cannot be disputed that the bank statement annexed as Annexure 'MN3' clearly indicates that VT27 million was credited to the account of Chiko Farm Products which is a registered business name.
9. This is a winding up petition, given that there are contested issues as to disputes of facts I am not satisfied that there is a debt owed by the Company as alleged by the petitioner to warrant its winding up.
10. The petition is therefore dismissed and the respondents are entitled to costs on a standard basis.

DATED AT Port Vila, this 22 day of August, 2014.

BY THE COURT



D. Aru  
Judge.