



REPUBLIC OF KENYA



**In re Cytonn High Yields Solutions (In Liquidation) (Insolvency Petition E063 of 2021)
[2024] KEHC 14726 (KLR) (Commercial and Tax) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14726 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E063 OF 2021
FG MUGAMBI, J
NOVEMBER 22, 2024
IN THE MATTER OF CYTONN HIGH YIELDS SOLUTIONS (IN LIQUIDATION)**

RULING

(On the applications dated 15th April 2024, 9th April 2024, 11th March 2024, 20th December 2023, 20th November 2023, 1st November 2023, 17th November 2023, 3rd July 2023, 16th November 2023, 18th August 2023, 2nd October 2024 and 4th October 2024)

Introduction & Background

1. On 27th September 2024, the court issued directions on all pending applications filed in court and listed in a schedule in the letter by Mali Advocates dated 12th August 2024. By the said directions the applications for joinder of the investors/ home owners as well as the Cytonn Special Purpose Vehicles (SPVs) was not contested. These were thus allowed by consent. The application for the Official Receiver to call for a creditors meeting is also spent as the Official Receiver was directed to publish a conspicuous notice of the creditors meeting within 7 days of the date of the directions in a newspaper of nationwide circulation.
2. Regarding the applications which arose out of the consent dated 1st August 2023 between SBM Bank and the Official Receiver, it was agreed by consent that the Official Receiver shall convene a meeting within 30 days from the date of the directions between SBM Bank and the parties to the various applications therein with a view of reaching a settlement and withdrawing the said applications. These applications were therefore not determined at this point, pending further mention to confirm the status of the negotiations, which was to be without prejudice to the other applications herein.
3. By consent, the applications dated 11th March 2024, 20th November 2023, 8th November 2023, 31st July 2023, 18th November 2023 and 16th November 2023 and filed by the SPVs Epazec Company LLP (Applewood Miotoni), Mystic Plains LLP, Cytonn Investments Partners Eleven LLP (Ridge), Cytonn Investments Partner Four LLP (Athi River), Cytonn Investments Partners Ten LLP (Taraji) and Cytonn Investments Partner Twenty LLP (Cysuites) respectively were consolidated and are now



to be determined together in this ruling. Save for the directions given above, all other issues and applications contained in the said letter and schedule of 12th August 2024 were to be determined substantively in this ruling.

4. As such, flowing from the said letter, the following are the applications for the court's determination:
 - i. The application dated 15th April 2024 by creditors of CHYS and members of the Creditors Restructuring Committee;
 - ii. The application dated 11th March 2024 by Cytonn Investments Partners Eleven LLP (Ridge);
 - iii. The application dated 11th March 2024 by Epazec Company LLP(Applewood);
 - iv. The application dated 20th December 2023 by Epazec Company LLP(Applewood);
 - v. The application dated 20th November 2023 by Mystic Plains LLP;
 - vi. The application dated 1st November 2023 by Cytonn Investment Partners Five LLP (Riverrun);
 - vii. The application dated 17th November 2023 by Cytonn Investments Partners Eleven LLP (Ridge);
 - viii. The application dated 3rd July 2023 by Cytonn Investments Partners Four LLP (Athi River);
 - ix. The application dated 16th November 2023 by Cytonn Investments Partners Twenty LLP (Cysuites);
 - x. The application dated 16th November 2023 by Cytonn Investments Partners Ten LLP; and
 - xi. The application dated 18th August 2023 by Kevin Ochieng Macakiage.
5. The court further granted leave for the filing of a formal application seeking the joinder of Edwin Dande as an interested party which was done through the Notice of Motion dated 2nd October 2024. Leave was also granted to the Official Receiver to file an application seeking vesting orders and enforcement of the preservation orders in respective properties which was done through the Notice of Motion dated 4th October 2024.
6. The court directed the parties to file their various responses to the aforementioned applications which responses are now record and even though there is an application to expunge the Official Receiver's responses for being filed outside the 7-day timeline set by the court, I find that it will be in the interest of justice and expeditious disposal of this matter if the same is considered and not expunged considering that the delay is only by a day, if at all.
7. The court also directed that the applications be canvassed and disposed by way of written submissions which are on record and which I will make relevant references to in my analysis and determination below.

Analysis and Determination

8. Having carefully reviewed the applications, responses, evidence and submissions thereto, I have identified the following composite issues for the court's determination:
 - i. Whether the Liquidator is in breach of the *Insolvency Act*, and consequently, whether his continuation in office is unlawful;



- ii. Whether the court should lift the preservation orders issued in the Ruling of 6th January 2023 in respect of the properties owned by the SPVs; Ridge, Applewood Miotoni, Taraji, Cysuites, Riverrun, Athi River, The Alma and Newtown;
- iii. Whether the Official Receiver should be allowed to enforce the preservation orders issued;
- iv. Whether a meeting should be convened to table and deliberate on the Debt Settlement Proposal by CHYS;
- v. Whether a caveat should be registered against the Athi River Properties;
- vi. Whether the liquidation orders issued should apply to the home owners/investors who already had good titles at the time the liquidation orders were issued;
- vii. Whether vesting orders should be issued in respect of Mystic Plains, Taraji, Ridge and Applewood properties; and
- viii. Whether Edwin Harold Dayan Dande should be enjoined as an Interested Party in these proceedings.

Whether the liquidator is in breach of the Insolvency Act, and consequently, whether his continuation in office is unlawful:

9. The applicants who raise this issue accuse the Official Receiver of contravening section 438 of the Insolvency Act by amongst others failing to call for a creditors' meeting within three months for purposes of appointing a person to replace him as a liquidator. There are allegations of breach and delay in providing the creditors with minutes and documentation of previous meetings as directed by this court and delay with the process. Some of the applicants seek to be allowed to hold a creditors meeting to remove the liquidator, citing section 468 of the Insolvency Act.
10. The Official Receiver refutes the allegations presented by the creditors and argues that he has exercised his duties diligently on behalf of the creditors and in accordance with the Insolvency Act. It is the Official Receiver's submission that the applicants have misdirected themselves on the import of section 438 of the Insolvency Act as this provision envisions a scenario where the court makes a liquidation order but fails to make an appoint a liquidator.
11. For context, the said section 438 of the Insolvency Act provides as follows:
 - “(1) Subsections (2) to (7) have effect, subject to section 441 when the Court makes an order for the company to be liquidated.
 - (2) The Official Receiver becomes the liquidator of the company and continues in office until some other person becomes liquidator under this Part. (emphasis added).
 - (3) The Official Receiver is the liquidator during any vacancy in the office of liquidator. (emphasis added).
 - (4) At any time while liquidator of the company, the Official Receiver may convene separate meetings of the company's creditors and the company's contributories for the purpose of choosing a person to be liquidator of the company in place of the Official Receiver.
 - (5) The Official Receiver shall—



- a. as soon as practicable during the three months from and including the date on which the liquidation order was made, decide whether to exercise the power under subsection (4) to convene meetings;
 - b. if in accordance with paragraph (a), the Official Receiver decides not to exercise that power—give notice of the decision, before the end of that period, to the Court and to the company's creditors and contributories; and
 - c. whether or not a decision to exercise that power has been made) exercise the power to convene meetings under subsection (4) if requested to do so by creditors who hold not less than one quarter in value of the total amount of the company's debts.
- (6) If the duty imposed by subsection (5)(c) arises before the Official Receiver has performed the duty imposed by subsection (5)(a) or (b), the Official Receiver is not required to perform the latter duty.
- (7) The Official Receiver shall include in a notice given under subsection (5) (b) an explanation of the creditors' power under subsection (5)(c) to require the Official Receiver to convene meetings of the company's creditors and contributories.”
12. From my reading of sections 438(2) and (3) of the *Insolvency Act*, I am inclined to agree with the submission that, under section 438, the Official Receiver automatically assumes the role of a de facto liquidator when no other liquidator has been appointed. In this capacity, the Official Receiver acts as the liquidator until another individual is appointed to the position.
13. In such a scenario, section 438 requires the Official Receiver to convene a meeting of creditors within three months for the purpose of appointing a substantive liquidator. However, it is important to note that this provision does not apply when the Official Receiver has been appointed as the substantive liquidator by the court.
14. In the present case, through the ruling of 6th January 2023, this court explicitly stated: “I hereby appoint the Official Receiver as the Liquidator of the Company.” This appointment by the court was not made under section 437 of the *Insolvency Act*, which governs the appointment of provisional liquidators. This distinction reinforces the position that the Official Receiver was appointed as the substantive liquidator. Consequently, the Official Receiver was not obligated to convene a creditors’ meeting to appoint another liquidator, as mandated by section 438 of the *Insolvency Act*.
15. I note that the Official Receiver has provided evidence demonstrating compliance with the statutory requirements for the role as liquidator. Specifically, it has been shown that a notice of appointment as liquidator was published in the Kenya Gazette; that a notice for the first creditors’ meeting held on 7th March 2023 was issued; and that the Official Receiver has been regularly updating the creditors on the progress of the liquidation process.
16. Regarding the admission of proof of debts from creditors, my view is that the *Insolvency Act* envisions this as a continuous process. This reasoning accounts for the varying types of creditors, the nature of their claims, and the different stages at which such claims may arise or be finalized during the insolvency proceedings. The fact that not all the creditors have had their proof of debts responded to or admitted does not in itself justify the removal of the liquidator from office.



17. In light of these observations, I find no merit in the contention that the Official Receiver has contravened the *Insolvency Act*. Furthermore, having established that the Official Receiver was substantively appointed by the court as liquidator, I find that he is lawfully serving in that capacity. Consequently, the prayers sought are without merit and are hereby dismissed.

Whether the court should lift the preservation orders issued in the Ruling of 6th January 2023 in respect of the properties owned by the SPVs; Ridge, Applewood Miotoni, Taraji, Cysuites, Riverrun, Athi River and Newtown:

18. In the Ruling of 6th January 2023, this court held that it was prudent to preserve the aforementioned properties until the assets of CHYS are realized by the Official Receiver. This court further directed that the affected entities, namely, the SPVs, would be afforded an opportunity to present their cases. On this basis, the applicants, being the SPVs, who have since been enjoined as interested parties in this matter, now seek the lifting of the preservation orders.
19. In their separate applications they contend that they were not parties to the initial proceedings and were not heard before the preservation orders were issued. The SPVs further argue that they are separate and distinct from their partners and managers and that they are entitled to own property in their own names. They contend that the lumping together of the SPVs with the liquidated entities into one entity and holding the SPVs liable for contracts to which they are not privy violates the doctrines of corporate personality and privity of contract.
20. They equally submit that the financing agreements between the SPVs and the liquidated entity were above board and that they do not suffice to demonstrate a clear chain of tracing. As such, the Official Receiver cannot depend on the doctrine of tracing if that chain is not established.
21. In response, the creditors opposed to the applications and the Official Receiver averred that in its application for administration, CHYS acknowledged that it lent out money to the SPVs. The court in its Ruling of 17th January 2024 found that this money lent out belonged to the creditors of CHYS and that it was invested in the various preserved properties. They contend that this issue of lifting the preservation orders has been overtaken by events as the court, in the said Ruling, vested the preserved properties in the Official Receiver. The creditors aver that lifting the preservation orders would expose them and that they may not be able to realize their investments.
22. In *Middle East Bank Kenya Ltd V Widad Hussein Badru & Hassan Saleh Manswab*, [2020] KEHC 9755 (KLR) this court cited with approval from the Canadian decision in *Lennox Industries (Canada) Ltd V Canada*, 1987 CanLII 5321 (FC), [1987] 3 FC 338. I am equally persuaded by the following observation made in that decision regarding the applicability of the doctrine of tracing:

“To turn now to the plaintiff’s second argument: certain assets, in any event, belong to the plaintiff by virtue of the doctrine of tracing. The starting point is the principle that stolen goods in the hands of a thief, or a trustee who has misappropriated funds, are not his or her property; they remain the property of the person from whom they were stolen. This principle is expressed in Underhill’s Law Relating to Trusts and Trustees, 12th ed. (1970), at p. 243, as follows: “a court of equity covers a party who has obtained property by fraud into a trustee for the party who is injured by that fraud”:

The moneys stolen or acquired by fraud are thus impressed with a trust and may be followed and recovered by the true owner, unless they are acquired by a bona fide purchaser for value without notice of the theft or fraud. In *Banque Belge pour l’étrangerv. Hambrouck et al.*, [1921] 1 K.B. 321 (C.A.) at p. 335, the principle is expressed in the following terms:



If, following the principles laid down in *In re Hallett's Estate*, it can be ascertained either that the money in the bank, or the commodity which it has bought, is “the product of, or substitute for, the original thing”, then it still follows “the nature of the thing itself”. On these principles it would follow that as the money paid into the bank can be identified as the products of the original money, the plaintiffs have the common law right to claim it, and can sue for money had and received.”

23. In line with the reasoning above, in the rulings of 6th January 2023 and 17th January 2024 the court reiterated that the doctrine of tracing was properly invoked and demonstrated and that there is a chain linking the creditors’ money and the preserved properties acquired by the SPVs.
24. In their current applications, the SPVs have not presented any new arguments or evidence beyond those already raised in prior proceedings. These arguments were carefully considered and formed the basis of the court’s rulings. It remains the case that, while the SPVs are separate legal entities from CHYS, they are undeniably connected through shared control and directorship under Edwin Dande, CHYS’s Chief Executive Officer. Additionally, it has been established that the funds utilized by the SPVs can be traced directly to deposits made by CHYS’s creditors.
25. The SPVs have yet to demonstrate that the subject projects are independent of the funds received from CHYS’s creditors. Furthermore, CHYS’s influence over the SPVs, exercised through its CEO, Edwin Dande, remains unbroken. Significant concerns persist regarding whether the SPVs were deliberately structured as part of a broader scheme to obscure the location of creditor funds and frustrate recovery efforts.
26. With these unresolved issues, the SPVs cannot rely on the doctrines of corporate separateness or privity of contract to shield themselves from scrutiny. They must move beyond these protective legal constructs and provide transparent answers to the creditors’ questions. Such accountability cannot be achieved if the preserved properties remain under the control of CHYS, the SPVs, or their managers.
27. It is therefore my finding that lifting or varying the preservation orders, as well as exempting the properties in question from the liquidation process, which is intended to benefit the creditors as a whole, would significantly undermine the realization efforts being carried out by the Official Receiver. Such actions would further exacerbate an already precarious situation, potentially leaving creditors unable to recover their investments.
28. For these reasons, I find that the SPVs have failed to provide any valid or justifiable grounds for the court to lift, vary, or set aside the preservation orders issued on 6th January 2023. Accordingly, the prayers sought in the SPVs’ applications are without merit and must be dismissed.
29. Directly related to the issue of the preservation orders are the applications brought by interested parties, whose claim is that they are bona fide purchasers and investors in some of the properties under the various SPVs. These parties argue that the said properties should be excluded from the liquidation process as they have valid and enforceable legal interests in the properties. They further contend that including the properties in the liquidation process would unjustly deprive them of their investments and would amount to an infringement of their proprietary rights.
30. On this basis, they seek orders to lift the preservation orders and exclude their properties in question from the liquidation, maintaining that their interests are distinct from and unrelated to the funds of CHYS’s creditors.



31. The central issue for determination is whether the claims of the interested parties, who assert legal ownership or investment interests in the properties, supersede the rights of the creditors to recover their funds under the liquidation process.
32. It is a well-established principle of insolvency law that only the assets that belong to a liquidated entity can be subject to administration and distribution among its creditors. Section 3(1) of the *Insolvency Act* expressly identifies one of the primary objectives of insolvency proceedings as the establishment of a framework for the efficient and equitable administration of the assets of insolvent companies and other corporate bodies.
33. In this regard, section 448(1)(b) of the *Insolvency Act* imposes a duty on the liquidator to collect, preserve, and apply the assets of the insolvent company toward the discharge of its liabilities. This process involves verifying ownership, tracing funds, and challenging claims to assets that are improperly or fraudulently withheld. By implication, assets not proven to belong to the liquidated company fall outside the liquidator's jurisdiction and cannot be included in the distribution process. This framework reflects the dual purpose of insolvency law: to maximize the recovery for creditors while respecting the legal rights of third parties.
34. It follows, therefore, that assets that have been purchased by bona fide purchasers for value, without notice of the company's insolvency or impending liquidation, do not form part of CHYS' or other such liquidated company's assets. The onus is on the applicants to demonstrate ownership and good title to such assets, and provide sufficient evidence to the liquidator to justify their exemption from the liquidation estate. This requires the applicants to establish that their transactions were conducted in good faith, for valuable consideration, and without knowledge of the company's financial distress.
35. It must be emphasized that the liquidator retains the authority under insolvency law to challenge or avoid transactions where assets were transferred with knowledge of, or in anticipation of, the company's insolvency or liquidation. Such transfers are considered attempts to defraud creditors and can be voided to preserve the integrity of the liquidation process. Section 498 of the *Insolvency Act* expressly criminalizes transactions designed to defeat creditor claims, including those executed with the intention of diminishing the pool of assets available for distribution.
36. As such, the liquidator is empowered to scrutinize all transactions involving company assets, particularly those occurring in the period leading up to the insolvency, to determine whether such transfers were legitimate or designed to frustrate the rights of creditors. These applications are therefore subject to the scrutiny of the Official Receiver as liquidator.

Whether a meeting should be convened to table and deliberate on the Debt Settlement Proposal by CHYS:

37. This Court, in its directions of 27th September 2024 directed the Official Receiver to call for a meeting of the creditors. I think the only issue for the court's determination arising out of this issue is whether CHYS's debt settlement proposal should be tabled and deliberated by the creditors in that meeting. The applicants state that they are creditors of CHYS and members of the Creditors Restructuring Committee (CRC) consisting of seven members duly elected by over 600 creditors of CHYS and Cytonn Real Estate Project Notes LLP (CPN), exercising their freedom of Association as envisaged under the Article 36 (1) of *the Constitution*.
38. According to them, they feel that they would not be able to recoup their investments as unsecured creditors through the liquidation route and would have a better chance to recoup their entire principal through restructuring of the debt owed. The said creditors contend that their cumulative debt amounts



- to KShs. 4,849,390,798.25. It is their wish to adopt the debt settlement proposal through restructuring of the debt owed to them by CHYS/CPN and they have signed support letters to that effect.
39. The Official Receiver, in opposing the application, contends that the debt settlement proposal is a creation of Cytonn and notes that it was previously presented to the Administrator of CHYS during the administration phase. Following a review, the Administrator concluded that the proposal was not viable and determined that CHYS could not be salvaged as a going concern. This assessment formed the basis for the subsequent decision to place CHYS into liquidation.
 40. The Official Receiver further opposes the current proposal on multiple grounds. First, the proposal is unsupported by adequate documentation and relies on assumptions and misrepresentations that lack a factual basis. Second, critical questions regarding its feasibility and practical implementation remain unanswered, making it premature to subject the proposal to a vote. The Official Receiver emphasizes that, given these deficiencies, it would be impractical and inappropriate to adopt or implement the proposal in its current form. These factors reinforce the conclusion that the proposal is untenable and cannot advance in the liquidation process.
 41. Having carefully reviewed the debt settlement proposal, I am inclined to agree with the Official Receiver that it is devoid of supporting documentation and substantive detail. It amounts to little more than a colourful presentation of hope, rather than a practical and actionable plan. The proposal is purportedly designed to achieve a 100% recovery of the principal debt through the sale of CHYS's assets; ironically, the very course of action the Official Receiver is already undertaking. Yet, the applicants oppose the Official Receiver's efforts and instead propose to take over the sale and distribution of assets themselves. This is a clear encroachment on the statutory responsibilities vested in the Official Receiver as the liquidator, responsibilities that cannot be lawfully assumed by any other party.
 42. I concur with the submission that the proposal is built on speculative assumptions, particularly regarding the appreciation of the subject properties' value over time and the eventual recovery of creditors' funds upon their sale. The plan also references the procurement of an investor who could purportedly buy out most of the creditors' investments, but it provides no specifics about who these potential investors might be or the feasibility of securing such investment. As was emphasized in *In re Tusker Mattresses Limited*, [2021] KEHC 276 (KLR), restructuring plans must include sufficient detail. The applicants' proposal falls far short of these requirements, rendering it impractical and incapable of providing a clear path forward.
 43. In essence, the proposed settlement plan merely reiterates what the court and the creditors already know; that CHYS is in severe financial distress. While it optimistically suggests that there is still a chance to rescue CHYS as a going concern, this claim is contradicted by the findings of both the Administrator and the Official Receiver, who have concluded that a rescue is not feasible.
 44. It is noted that prior to the issuance of the liquidation order, CHYS was placed under administration. The purpose of administration is to explore the possibility of rescuing a company as a going concern or stabilizing its operations to achieve a better outcome for creditors than immediate liquidation. During this period, the Administrator thoroughly reviewed potential rescue options and submitted a report to the court, which included the current proposal. After careful consideration of the Administrator's findings, the court determined that the proposed recovery plan was not feasible and that CHYS could not be salvaged. Consequently, the court issued a liquidation order.
 45. Given this context, the proposal now being advanced by the applicants is not open to relitigation. The matter was fully canvassed during the administration process, and the court's decision to place CHYS under liquidation renders any further discussion of this proposal moot. Allowing the same proposal to



be reconsidered would not only undermine the finality of the court's previous determination but also delay the ongoing liquidation process, to the detriment of the creditors. The proper course of action now lies in adhering to the liquidation framework already in place, rather than revisiting proposals that have been conclusively rejected.

46. In any case, I further note that the proposal is presented by a faction of creditors identifying themselves as the Creditors Restructuring Committee (CRC). This raises an additional issue, as the *Insolvency Act*, in my view, does not envisage the existence of parallel processes or separate creditors' meetings other than those convened under the auspices of the liquidator. The applicants, or any other parties purporting to act in this capacity, lack the legal authority to organize or present proposals outside the framework provided by the Act.
47. The rationale behind this restriction is grounded in the principle of equality among creditors under insolvency law. Allowing the CRC, or any self-appointed group of creditors, to act independently of the liquidator risks undermining the orderly and impartial administration of the insolvency process. Such parallel initiatives could fragment creditor representation, delay the liquidation process, and jeopardize the efficient realization of assets for the benefit of all creditors.
48. It must be emphasized that the office of the liquidator is the sole authority empowered by law to oversee the administration of the insolvent company's assets, convene creditors' meetings, and evaluate restructuring proposals. Any efforts to sidestep this statutory framework by splinter groups, however well-intentioned, lack legal foundation and threaten to derail the liquidation process. Creditors must present their concerns or proposals within the structure established by the Act to ensure transparency, accountability, and fairness to all stakeholders.

Whether a caveat should be registered against the Athi River Properties:

49. Having determined that the preservation orders against the other subject properties should not be lifted for purposes of the liquidation process, I further find that no caveat can be registered against the Athi River properties as sought by Cytonn Investments Partners Four LLP. Allowing the registration of such a caveat would defeat the purpose and objectives of the liquidation process by restricting the liquidator's ability to manage and realize the assets of CHYS for the benefit of its creditors. Additionally, it would contradict the preservation orders already in place, which are designed to safeguard the subject properties from interference and to ensure they remain available for equitable distribution among creditors.

Whether vesting orders should be issued in respect of the Ridge, Tarani, Miotoni/Apple Wood and Mystic Plain/Newtown properties:

50. The Official Receiver notes that this court issued preservation orders in respect of the above properties and now prays for vesting orders in respect of the same. By dint of section 444 of the Act, a liquidator has the authority to assume control of all the property to which a company is or appears to be entitled. Section 445 of the Act in turn provides for vesting orders which have the effect of transferring the legal ownership of a liquidated entity's assets to the liquidator.
51. I have already reiterated this court's finding regarding the financial relationship and dealings between CHYS (in liquidation) to the independent SPVs, which were registered by CIM. Similarly, having determined that the preservation orders in respect of the subject properties should remain in force, the logical and necessary consequence is for the properties to vest in the Official Receiver as liquidator.



52. This will enable the liquidator, to effectively realize the properties and apply the proceeds for the benefit of the creditors in accordance with the objectives of the liquidation process to collect, manage, and dispose of the assets of the insolvent company for equitable distribution among creditors.

Whether Edwin Harold Dayan Dande should be enjoined as an Interested Party in these proceedings:

53. Mr. Dande has sought to be enjoined in these proceedings on the basis that he is the majority shareholder and a Director of Cytonn Investment Management PLC (CIMP). CIMP serves as the investment manager and promoter of both CHYS and CPN. He contends that he has also personally invested in the SPVs. Given these roles, he asserts that he has a direct and substantial interest in the outcome of these proceedings.
54. While the Official Receiver and some creditors have opposed Mr. Dande's application to be enjoined, I note that he has already been enjoined in these proceedings by virtue of other applications where he, along with others, sought similar relief. Furthermore, it is undisputed that Mr. Dande has actively participated in the proceedings, including swearing affidavits on behalf of CHYS and attending meetings with the Official Receiver. Both the Official Receiver and the creditors acknowledge his involvement, which suggests that his inclusion as an interested party would formalize a role he is already performing.
55. I find that Mr. Dande has a legitimate stake and interest in these proceedings by virtue of his position as a Director and majority shareholder of CIMP, his role in promoting CHYS and CPN, and his personal investments in the SPVs. Enjoining him as an interested party will not cause any prejudice to the Official Receiver or the creditors and is consistent with ensuring that all parties with a significant interest are included in the process.
56. However, as I have already found that the debt settlement plan has been overtaken by events and deemed unviable, Mr. Dande's prayer to explain or advocate for the same cannot be granted. The liquidation process has moved beyond the point of considering such proposals, and the focus must remain on the orderly realization of assets and distribution to creditors under the framework of the Insolvency Act. While Mr. Dande may continue to participate in these proceedings as an interested party, his involvement must align with the objectives of the liquidation and cannot be used to reopen or relitigate settled matters.

Conclusion and Disposition

57. Accordingly, I make the following dispositive orders:
- i. The applications dated 15th April 2024, 9th April 2024, 11th March 2024, 20th December 2023, 20th November 2023, 1st November 2023, 17th November 2023, 3rd July 2023, 16th November 2023 and 18th August 2023 are dismissed;
 - ii. The application dated 2nd October 2024 is allowed but only to the extent that Edwin Harold Dayan Dande is enjoined as an interested party in these proceedings;
 - iii. The applications dated 4th October 2024 are allowed and the Official Receiver is allowed to enforce the preservation orders issued on 6th January 2023 over the properties listed in the application; - Riverrun; Taraji; The Ridge; 12.5 % shares in Superior Homes Kenya Limited; Apple wood; Cysuites; Alma; Mystic Plain/Newtown (to the extent of Cytonn Investment Partners Four (CIP 4) per the sale agreement dated 18th December 2015;



- iv. The Officer Commanding Station (OCS) for the areas where the respective properties above are situated (as specifically listed in the application) is hereby directed to assist the Official Receiver enforce these orders;
- v. The properties commonly known as the Ridge, Taraji, Miotoni/Applewoods and Mystic Plans/Newton shall vest with the Official Receiver for valuation and realization. The Official Receiver shall apply and be issued with provisional titles in respect of the properties herein in the event that Cytonn Investments, Edwin Dande or any other Cytonn entity fails to surrender the same within 7 days of these Orders;
- vi. The matter shall be mentioned to confirm compliance and issuance of further directions; and
- vii. Leave to appeal against this ruling is hereby granted to any party desirous of such appeal. Certified proceedings and copies of this composite ruling shall be availed to any party upon payment of the requisite fees.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 22ND DAY OF NOVEMBER 2024.

F. MUGAMBI

JUDGE

