



**In re General Plastics Limited (Insolvency Cause E003 of 2021)
[2023] KEHC 17773 (KLR) (Commercial and Tax) (26 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E003 OF 2021
A MABEYA, J
MAY 26, 2023
IN THE MATTER OF GENERAL PLASTICS LIMITED
AND
IN THE MATTER OF THE COMPANIES ACT NO. 17 OF 2015
AND
IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF
2015**

RULING

1. Before Court is an application dated 13/1/2023. It was brought under Article 159 of the *Constitution*, Section 1A, 1B and 3A of the *Civil Procedure Act*, Section 522, 572 (1) (a) and (2) (e), 573 (1) (b), 579, 593 and 594 of the *Insolvency Act*, Section 93(1) (a) and 2 (c) of the *Companies*, Order 5 Rule 17 (1) (2) and (4), Order 50 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*.
2. It sought orders that the term of appointment of the administrator be extended by a further 2 years from 3/2/2023 to allow completion of the administration of the company.
3. The grounds for the application were set out on the face of it and in the supporting affidavit of Ponangipalli Venakata Ramano Rao sworn on 13/1/2023. It was contended that the Court had extended the administration term twice on 14/1/2021 for 2 years and on 2/2/2022 for 12 months as from 3/2/2022.
4. That following his application dated 11/1/2021, by a ruling dated October 21, 2022, the court ordered the directors of the company to provide the administrator with a statement of affairs in order to ascertain the creditors. That the administrator was also ordered to send a proposal to the creditors within 60 days of receipt of the statement and call a creditors meeting.



5. However, the directors failed to comply with the order and had not provided the statement of affairs for ascertaining the creditors. For this reason, the administrator was unable to send a proposal nor call a creditor's meeting as per the court order. The administrator was therefore apprehensive that he would not be able to complete the administration process prior to the expiry of the term being 3/2/2023.
6. He therefore prayed for a further extension of two years as an extension of one year would not be sufficient to enable compliance with the ruling of October 21, 2022. That a two year extension would also enable the administrator to continue running the company and obtain an acceptable offer for sale of the company's assets.
7. The application was opposed by the replying affidavit of Joseph Murithi sworn on 7/2/2023 on behalf of Protea Chemicals Kenya Limited, an unsecured creditor. It was contended that the administrator was guilty of misfeasance and was in breach of his fiduciary duties under the Act.
8. That there was no proof that the company's directors had been served with the court order to enable compliance, and that no criminal proceedings had been commenced against the directors for failure to comply under section 546 of the *Insolvency Act*.
9. That under section 580 of the Act, the administrator had power to obtain information to ascertain the creditors from other sources such as the person's employed by the company during that period.
10. That on the 2 occasions that the administrator had sought an extension, the creditors were not served with the applications, and only one report on the financial aspects of the company was filed in court alongside the application for extension in 2021 wherein the administrator provided a statement of proposals. That no other report had been provided to the creditors and they were unaware of the current liabilities of the company or the payment plan.
11. That the administrators' costs continued to pile and there was no indication of the steps taken by the administrator. That the request for an extension to look for a possible buyer to purchase the company's assets was strange to Protea who was unaware of the administrator's intention to sell. That the administrator was opaque and incompetent to run the administration and that for the 3 years that the company had been under administration, the administrator had not accounted to the court or the creditors for the assets within his management.
12. The application was canvassed by way of written submissions. This court has considered those submissions.
13. Section 593 and 594 of the *Insolvency Act* provides: -
 - “ 593. The appointment of an administrator automatically ends at the end of twelve months from and including the date on which it took effect.
 594.
 - (1) Despite section 593-
 - (a) on the application of an administrator, the Court may by order extend the administrator's term of office for a specified period; and
 - (b) an administrator's term of office may be extended by consent for a specified period not exceeding six months.



- (2) An order of the Court made under subsection (1)(a)-
- (a) may be made in respect of an administrator whose term of office has already been extended; but
 - (b) may not be made after the administrator's term of office has ended.”

14. This Court must consider the application keeping in mind the objectives of an Administration. Those objectives are to be found in section 522 of the Act. The objectives are, inter alia, to maintain the company as a going concern, to achieve a better outcome for the company's creditors and to realise the property of the company in order to make distribution to one or more secured or preferential creditors.
15. In this case, the administrator seeks an extension of the administration which expired on 3/2/2023 to allow completion of the administration of the company. His case was that the delay by the directors in complying with the order of October 21, 2022 made it impossible to finalize the administration within the 12 months extended period.
16. The aforementioned orders directed the directors to provide the administrator with a statement of affairs to ascertain the creditors. The administrator was to thereafter send a proposal to the creditors within 60 days of receipt of the statement and call a creditor's meeting 70 days after receipt of the statement.
17. As pleaded by the unsecured creditors, there was no evidence that the order was ever served on the directors to ensure compliance. There was also no indication that the administrator had taken any other steps to ascertain the company's creditors having been in administration for three years since his appointment. Further, there is no record of the administrator's dealings with the company for the 3 years he has been in administration as no reports have been filed with court or with the known creditors to ascertain the financial status of the company.
18. These issues will however be more ably addressed in the hearing of the unsecured creditor's notice to produce dated 7/2/2023 which is pending before this court. I am alive that the administration having been there for 3 years and nothing has been achieved so far, it would be disastrous to terminate it at this juncture as opposed to extending it.
19. The foregoing being the case, this Court is alive to the administrator's inability to properly administer the company in the absence of the statement of affairs. The administrator is hereby ordered to serve the order immediately upon the directors and return service to this court within 7 days of this ruling.
20. In the event of non-compliance on the directors' part within 14 days of service, the administrator will be at liberty to bring contempt proceedings against the directors. Or, he may opt to follow the criminal proceedings against them under the relevant laws.
21. In the interim, the administration is hereby extended by 12 months.
22. Each party to pay its own costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MAY, 2023.

A. MABEYA, FCIArb

JUDGE

