



**Anassi v KCB Bank Limited & another (Commercial Case E365 of 2023)  
[2023] KEHC 21542 (KLR) (Commercial and Tax) (22 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21542 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E365 OF 2023  
DAS MAJANJA, J  
AUGUST 22, 2023**

**BETWEEN**

**EMMANUEL ANASSI ..... PLAINTIFF**

**AND**

**KCB BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**RECEIVER MANAGER DAC AVIATION E.A. LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the suit and accompany application dated August 15, 2023, the Plaintiff seeks an injunction restraining the 1<sup>st</sup> Defendant from taking over the suit property or interfering with the operations of DAC Aviation East Africa Ltd through its appointed receiver.
2. When the application came up for directions I directed the Plaintiff to show cause why the suit should not be struck out on the ground that the Company, which owns the suit property, is under liquidation.
3. The Plaintiff argues that as a guarantor, he has an interest to see that the suit property is sold at the highest possible price in order to secure the business of the Company and to resolve the debt due to the Bank. He states that the 1<sup>st</sup> Defendant has acted in bad faith as it has been in negotiations with it with a view to securing a potential purchaser.
4. At the hearing, counsel for the Plaintiff conceded that the Company is under liquidation and that the Plaintiff does not have any proprietary interest in the suit property.
5. Counsel for the Defendants submitted that the Company is separate from its shareholders and directors and that once the court issued the liquidation order, the directors and shareholders lost control of the Company. That they, including the Plaintiff, lack any standing to prosecute this suit.



6. I am constrained to strike out the suit as the Plaintiff, in the position of director or shareholder of the Company or as a guarantor lacks any standing to file this suit to protect the property of the Company. Under section 444 of the *Insolvency Act*, once the liquidation order is made, the liquidator assumes control of the property of the Company to the exclusion of the shareholders and directors. Further, the Plaintiff does not have any proprietary interest in the suit property which charged to the Bank.
7. Since the Company is in liquidation, any cause of action against the Defendants can only be agitated by the Liquidator and not the Plaintiff.
8. The suit is therefore struck out. The Plaintiff shall pay costs of the suit and application assessed at Kshs 20,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF AUGUST 2023.**

**D. S. MAJANJA**

**JUDGE**

**Court Assistant: Mr M. Onyango**

**Mr Kirera instructed by Kiri Kinoti and Company Advocates.**

**Mr Kiche instructed by Triple OK Law LLP Advocated for the the Defendants.**

