



**Shangavi & another; Gadhoke (Interested Party) (Insolvency Cause E016 of 2022)  
[2023] KEHC 21450 (KLR) (Commercial and Tax) (9 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21450 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E016 OF 2022  
A MABEYA, J  
AUGUST 9, 2023  
IN THE MATTER OF THE COMPANIES ACT NO. 17 OF 2015  
AND  
IN THE INSOLVENCY ACT NO. 18 OF 2015  
AND  
IN THE MATTER OF THE GOOD EARTH (GROUP) LIMITED**

**IN THE MATTER OF  
JAYESH UMEDLAL SHANGAVI ..... 1<sup>ST</sup> APPLICANT  
NINA JAYESH SHANGAVI ..... 2<sup>ND</sup> APPLICANT  
AND  
HARVEEN GADHOKE ..... INTERESTED PARTY**

**RULING**

1. On February 9, 2022, Victoria Commercial Bank Limited appointed Harveen Gadhoke of Adili Associates LLP as Administrator of the property, assets and business of the Good Earth (Group) Ltd. (“the Company”). The appointment was pursuant to the powers given under a floating charge in terms of Section 534 of the *Insolvency Act*, (“the Act”).
2. Pursuant thereto, on September 29, 2022 the Administrator lodged a liquidation petition of even date. The same was on the basis that the company had no funds to sustain the administration and that the company could not be maintained as a going concern. That the company was indebted to Victoria Commercial Bank (“VCB”) to the tune of Kshs 1,273,000,000/=. That there were other 41 unsecured creditors with whose debt stood at Kshs 290 million.



3. That at the creditor's first meeting held on May 6, 2022, it was proposed that the Company do enter into a creditor's voluntary liquidation and a liquidator be appointed. The Administrator sought that he be appointed the liquidator.
4. On February 22, 2023, Jayesh Umedlal Shangavi, lodged a Notice of Preliminary Objection of even date. The basis of the objection was that under section 593 of the Act, the appointment of the Administrator lapsed on February 10, 2023 by operation of law. That he therefore lacked locus standi to continue the present proceedings. It was submitted that the Administrator had not applied for the extension of his term before it lapsed on February 10, 2023. That he therefore lacked *locus standi* to institute or continue the present proceedings. The case of Julian Adoyo Ongunga & Anor vs Francis Kiberenge Bondera (eKLR) was cited in support of that submission.
5. That since the Administrator lacked locus standi, the petition and subsequent proceedings were fatally defective and or a nullity and were for striking out in limine.
6. The objection was opposed by, *inter alia*, R World Enterprises Ltd and Flowtech Water Solutions Ltd; who are creditors. It was submitted that the liquidation was lodged under section 425 (1) (d) of the Insolvency Act ("the Act") which gives the Administrator power to apply for a liquidation order. That as at the time of instituting the liquidation proceedings the Administrator had locus before this court.
7. It was further submitted that the Administrator's term stopped running upon the filing of the liquidation petition on September 30, 2022. The cases of Paul Kamande Gicheba vs Jacob Kinyua Kiragu [2018] eKLR and Kinyanjui Njuguna & Co Advocates vs Invesco Assurance Ltd [2021] eKLR were cited in support of that proposition.
8. It was submitted in the alternative that if the Court finds that the term of the Administrator had lapsed, since it is in the best interest of the company that the insolvency proceedings be sustained, the court do appoint an interim administrator pending the determination of the petition.
9. It was further submitted that since the liquidation proceedings had been properly lodged in September, 2022, they cannot be termed as being fatally defective. That since the Insolvency proceedings are pending the assets of the company must be protected for the benefit and equality among the creditors. The cases of KSC International Ltd (Under Receivership) & 3 others vs Bank of Africa (K) Ltd & 8 others KCCA 911 (KLR) and Kagwimi Kangethe & Co Advvs vs Olerai Nurseries Ltd [2020] eKLR, were cited in support of those propositions. The Court was urged to sustain the proceedings.
10. The objection was raised by the two directors of the company. The basis of the objection is that the interested party ceased to be an administrator upon lapse of one year since appointment on February 10, 2022. That consequently the liquidation proceedings herein are fatally defective and a nullity.
11. Section 593 of the Act provides: -
 

"The appointment of an administrator automatically ends at the end of twelve months from and including the date on which it took effect."
12. On the other hand, section 594 of the Act provides circumstances in which the term of an administrator can be extended. It provides: -
  - (1) Despite section 593 –
    - a. On an 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.”
13. From the foregoing, it is crystal clear that on expiry of 12 months, the term of an administrator expires. That term can only be extended either by the court on application, or by the consent of the creditors.
  14. It is not in dispute that Harveen Gadhoke was appointed Administrator on February 10, 2022. His term as Administrator lapsed on February 9, 2022. I cannot see on record any application for extension of that term or any consent of the creditors to the extension of his term.
  15. Accordingly, I hold that Mr Harveen Gadhoke is no longer the Administrator of the Company upon expiry of his term as aforesaid. It is not clear why he did not seek the extension of that term if only for purposes of prosecuting the liquidation proceedings.
  16. Having held that the Interested Party is no longer an Administrator of the company, what befalls these proceedings. The directors of the company seek that the same be declared a nullity.
  17. It is clear that as at the time the interested party lodged the liquidation petition, he was still the Administrator of the Company. He had *locus standi* to lodge the petition. The proceedings were therefore properly legally and procedurally lodged. They were not a nullity. All that happened is that during their pendency the interested party lost the capacity to prosecute the proceedings.
  18. Can it therefore be said that the proceedings became fatally defective and a nullity by virtue of the interested party losing his status as Administrator? I do not think so. I will compare the proceedings to a suit which is properly filed by a natural person who then expires during its pendency. such suit does not become a nullity but only abates if for a period of time there is no substitution of the expired party.
  19. In the present case, the Interested party was clothed with the *locus standi* to institute the proceedings. He only lost that status by efflux of time. All that happened is that the proceedings remain in limbo and have no one to prosecute them until one with locus emerges.
  20. It must be appreciated that the company still remains insolvent. It is only unfortunate that the person under whom the company was placed failed to be diligent to apply for the extension of his mandate when required to do so. The assets of the company are still under the authority of the Insolvency Court, albeit under the supervision of a negligent Administrator (for failure to apply for the extension of his term pending his appointment as liquidator).
  21. As correctly submitted by the creditors who opposed the objection, once a liquidation petition has been presented, the assets of the company ought to be protected. This is to guard against dissipation or their being wasted. In the case cited by learned counsel for the creditors of *Tusker Mattresses Ltd vs Hotpoint appliances Ltd* [2021] KEHC 276 (KLR) Tuiyott J (as he then was) held: -
    - “ 36. The rationale behind section 429 of the *Insolvency Act*, as correctly submitted by Hotpoint, is that once a petition has been presented in Court the Company Assets ought to be protected. This is to guard against the directors of the company disposing of the company assets to the detriment of creditors (see J in *Coutts & Co V stock* [2000] 1 WLR 906).”
  22. Insolvency of Companies ordinarily caused by failed management. Incompetent and wrong management styles by directors of the company ordinarily lead to financial distress. In this regard, administration is prescribed for such companies to attempt resuscitation failing of which liquidation



is resorted to. That being the case, the assets of such a company should as far as possible be kept away from the reach of the directors to avoid carnage and wastage.

23. Accordingly, in the circumstances of this case, I have found that the administrator lost his status on or before February 10, 2023. However, the proceedings are still in a limbo until another administrator is appointed or and the party is substituted to take over the prosecution of this case.
24. Accordingly, I make the following orders: -
  - a. The preliminary objection dated February 22, 2022 (sic) is hereby dismissed with costs to the 2 creditors named above.
  - b. The proceedings shall continue to be in limbo until another competent person, the secured or any creditors applies for substitution.
  - c. For avoidance of doubt, Harveen Gadhoke shall continue to be in possession and in charge of the assets of the company until a suitable person is substituted to take over these liquidation proceedings.
  - d. An application for the substitution of Harveen Gadhoke as applicant in the liquidation proceedings be made within 30 days of this order failing of which these proceedings shall stand abated.
  - e. Mention on September 8, 2023 for further directions.

It is so ordered.

**DATED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF AUGUST, 2023.**

**A. MABEYA, FCI Arb**

**JUDGE**

