



Northern Rangelands Trading Limited v Alpha Fine Foods Limited (Commercial Case E768 of 2021) [2022] KEHC 12891 (KLR) (Commercial & Admiralty) (29 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12891 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
COMMERCIAL CASE E768 OF 2021
DO CHEPKWONY, J
JULY 29, 2022**

BETWEEN

NORTHERN RANGELANDS TRADING LIMITED PLAINTIFF

AND

ALPHA FINE FOODS LIMITED DEFENDANT

RULING

1. On July 27, 2022, this matter came up for directions on how to proceed with the hearing. Mr Oyomba, counsel for the plaintiff confirmed that the plaintiff had complied with pre-trial conferences and requested for a hearing date. M/S Mutisya, counsel for the defendant was of contrary view. She stated that they were unable to proceed with the matter given that the defendant company is under management of the official receiver who was appointed on December 6, 2021 substituting joint liquidators who had previously been appointed to take over the affairs of the defendant company. She alluded to the provisions of section 437 and 438 of the *Insolvency Act*, which in her view applies to the proceedings against a company placed under receivership and in the circumstances, the matter could not proceed. Counsel for the defendant thus undertook to file the necessary applications given that the defendant's directors had not given any directions and in addition to that, they have no capacity to deal with the affairs of the company in view of the official receiver having been appointed.
2. In rejoinder, Mr Oyomba submitted that the official receiver was appointed a year ago and his assumption to office is not novel to defeat the hearing of this matter. He added that this court had granted leave for the plaintiff to proceed with the suit and all along, the counsel for the defendant, on record now, have continued to act for the defendant company, even after the appointment of the receiver.
3. Having listened to the arguments submitted by both counsel on record for the parties, I find it necessary to recap on the events as captured by the court record, so as to shed light on the issues raised.



4. Firstly, the matter was mentioned before honourable Deputy Registrar on December 15, 2021 for purposes of confirming compliance with pre-trial directions. Then, M/S Mutisya brought up the issue of the defendant company having been placed in liquidation and official receivers appointed to handle the affairs of the defendant company.
5. The application dated April 4, 2022 was scheduled for hearing before this court on June 16, 2022, with M/S Mutisya and Mr Oyomba appearing for the defendant and plaintiff respectively. M/S Mutisya indicated that the defendant was not opposed to the said application and by consent of both counsel for the parties, leave was granted for the plaintiff to proceed with the matter against the defendant company.
6. The matter is then fixed for hearing and when it comes up, M/S Mutisya appears to renege the terms of the consent entered into on June 16, 2022, by submitting that the matter cannot proceed for hearing against a company whose affairs are managed by a receiver unless under the provisions of sections 437 and 438 of the *Insolvency Act*.
7. I have read through and considered the two provisions. Section 437 deals with the appointment and powers of provisional liquidators while section 438 dictates the functions and powers of official receivers in relation to the office of liquidation.
8. In my view, the two provisions of the law have no bearing with the contentious issues arising in the instant case, which is, whether the matter can proceed against the defendant company which has been placed under the management of an official receiver or not. The most appropriate section of the law applicable in the circumstances of this case is section 432(2) of the *Insolvency Act*, which bars the commencement and continuation of legal proceedings against a company in the event of a liquidation order being made on a provisional liquidation appointed unless the same is done with leave of the court. In the same wave length, section 560(1) of the same *act*, vests discretion under the court or an administrator/receiver as the case may be, to consent to the commencement and continuation of proceedings against such a company.
9. That being the case, it is not in dispute that a consent order was granted by this court on June 16, 2022, for leave for the continuation of the present proceedings against the defendant company. I therefore agree with the plaintiff's counsel that the said consent order was made after the receiver assumed the affairs of the defendant company. Therefore, by the existence of the said consent order, the defendants' counsel cannot be heard to say that the matter cannot proceed on the basis of the appointment of a receiver manager as this would be a vacuous way to court vis-à-vis the consent order allowing the applicant leave to proceed with the said proceedings.
10. In addition, the *Civil Procedure Rules* address on what steps an advocate should undertake if no longer ceased with instructions to proceed in any particular matter. The above having been said, this court reiterates that leave to proceed/continue with the proceedings herein was granted to the plaintiff and the same has never been reviewed, appealed against or set aside. It then follows that:-
 - a. The plaintiff be and is hereby directed to serve the pleadings filed under this suit to the defendants official receiver, who shall be at liberty to join in the suit as an interested party.
 - b. The defendants' counsel on record be at liberty to file and serve the necessary application if, they are no longer ceased with instructions to act in the matter.
 - c. Mention on September 27, 2022 for parties to confirm compliance and fix the matter for hearing.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 29TH. DAY OF JULY. 2022.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Gathuri counsel holding brief for Mr. Oyomba counsel for Plaintiff

Court Assistant - Sakina

