



**Protea Chemicals Kenya Ltd v General Plastics Limited; I & M Bank Limited (Objector);
PVR Rao (Administrator) (Civil Case E118 of 2018 & Insolvency Cause E003 of 2021
(Consolidated)) [2022] KEHC 14213 (KLR) (Commercial and Tax) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14213 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E118 OF 2018 & INSOLVENCY CAUSE E003 OF 2021 (CONSOLIDATED)**

**A MABEYA, J
OCTOBER 21, 2022**

BETWEEN

PROTEA CHEMICALS KENYA LTD PLAINTIFF

AND

GENERAL PLASTICS LIMITED DEFENDANT

AND

I & M BANK LIMITED OBJECTOR

AND

PVR RAO ADMINISTRATOR

RULING

1. On November 11, 2021, the court consolidated HCC E118/2018 and Insolvency Cause No E003/2021 as the matters are related.
2. On January 11, 2021, the administrator of General Plastics Limited (hereinafter “the company”) took out a motion on notice of even date under article 159 of the *Constitution* of Kenya 2010, section 522, 572(1) (a) and (2)(e), 573(1) (b), 579, 593 and 594 of the *Insolvency Act* 2015, section 923(1)(a) and (2)(c) of the *Companies Act*, order 5 rule 17(1) (2) and (4) and order 50 rule 6 of the *Civil Procedure Rules 2010*.
3. The prayers sought in the motion are largely spent save for one compelling the directors of the company and any other relevant persons to provide the administrator with a statement of affairs that complies with section 564(2) of the *Insolvency Act* 2015. There is also a prayer for an order directing



the administrator to hold a hybrid initial creditors' meeting in compliance with section 568 of the [Insolvency Act](#) under the supervision of the registrar of companies to ensure public order and decorum is maintained.

4. The grounds were that Mr Ponangipalli Venkata Ramana Rao was appointed administrator of the company on January 13, 2020; that the directors of the company and any relevant persons were required to furnish the administrator with the statement of affairs which they have failed to do to date; that in the absence of the statement of affairs and a creditor's list, the calling of the initial creditors' meeting has been challenging.
5. The administrator averred that it has become impossible to establish the true list of creditors; that a meeting by circulation is not possible unless there is clarity of the list of creditors and their contact details and that there are several challenges while trying to hold a creditors' meeting.
6. That a creditor by the name Protea Chemicals Kenya Limited filed an application in HCC No E118/2018 seeking to remove the administrator for alleged failure to carry out his duties which application has been opposed by the administrator.
7. On November 11, 2021, the court directed that the plaintiff's application in HCC No E118/2018 do serve as a response to the application discussed above ('first application').
8. The plaintiff's application is dated October 12, 2020 and was brought, inter-alia, under section 566 (5) (b), (7) 568, 578, 591 (1) & (2) [Insolvency Act](#) No 18 of 2015.
9. The plaintiff sought the removal of the administrator of the company for abdicating his statutory duty under the Insolvency Act. In the alternative, the plaintiff sought that the administrator be cited for being in breach of section 569 (5) of the [Insolvency Act](#) and be appropriately sanctioned.
10. The grounds were that; *vide* a notice published in the local dailies dated January 15, 2020, the defendant was placed under administration and the respondent named as its administrator. The plaintiff notified the administrator of its outstanding claim against the company which was on a decree for USD 272,720.99 in addition to interest and costs. That pursuant to the administration notice, the administrator had 60 days to circulate his statement of proposals to the creditors, to wit, by March 15, 2020 and a further 10 days to convene the creditors meeting.
11. That despite the statutory obligation imposed upon the administrator and the numerous reminders sent to him, he had wilfully neglected and abdicated his obligation to furnish the statement of proposals to the plaintiff. That in the period shortly after the lapse of the statutory timeline required to avail the said statements of proposals to enable the plaintiff to attend the creditors' meeting, the government imposed restrictions on gatherings and movement that were established on March 15, 2020. That he used the prevailing covid-19 pandemic and the government imposed restrictions as a smoke screen to hide and justify his egregious neglect to abide by his statutory duty.
12. That it took the intervention of this court *vide* its order of June 23, 2020 to have the administrator acknowledge the plaintiff's myriad of requests. That under the guise of supposed compliance with the court's directions, the administrator hesitantly availed the plaintiff with a report dated July 24, 2020 as the statement of proposal which was rendered around 122 days after the statutory timeline stipulated by the [Insolvency Act](#).
13. The plaintiff pleaded that the administrator's performance of his statutory duty has been in favour of I&M Bank, previously the objector to the plaintiff's execution proceedings. That this is in contravention of the [Insolvency Act](#). That unless the orders sought are granted, the plaintiff



- would continue to be unfairly subjected to immense anxiety and uncertainty with regards to the administration process.
14. In opposition to the second application, the administrator lodged a replying affidavit sworn by himself on November 23, 2020.
 15. The averments in the aforementioned replying affidavit were similar to those in the administrator's supporting affidavit in respect of his application dated January 11, 2021.
 16. He essentially asserted that the directors of the company have never submitted the statement of affairs as required by the *Insolvency Act* 2015. That in absence of the statement of affairs and creditors' list from the directors of the company, calling the initial creditors' meeting had become a challenge.
 17. Further, that at the time, the covid-19 pandemic crisis had restricted the assembly of people while virtual meetings did not end with any resolution. That on October 27, 2020, the administrator filed the statement of proposals together with an update as at September 30, 2020 with the official receiver.
 18. The plaintiff filed a further affidavit sworn on November 8, 2021 by its finance manager in response to the administrator's affidavit as discussed above. He averred that the administrator had not controverted the material averments in the application with respect to the failure to notify and or invite the applicant to the said virtual meetings he alluded to. That the administrator had admitted that he had convened meetings to the exclusion of the plaintiff and it was not clear when the meetings were ever convened.
 19. That the challenges enumerated by the administrator in convening the statutory meetings are afterthoughts as the administrator had not, with specificity, stated when the alleged meetings were convened and with whom he shared the statement of proposals.
 20. The issues for determination from the two applications are; whether Mr Rao should be removed as administrator of the company; whether the directors of the company should be compelled to provide the administrator with a statement of affairs and whether the administrator should be allowed to hold a hybrid initial creditor's meeting.
 21. Under the section 522 of the *Insolvency Act* ("the Act"), the objectives of administration are to maintain a company as a going concern, to achieve a better outcome for the company's creditors as a whole than would likely be the case if the company were liquidated and to realise the property of the company in order to make a distribution to one or more secured or preferential creditors.
 22. On January 15, 2021, the court extended the term of the administrator for a further period of 12 months. The court also allowed service of some application by the administrator upon the creditors by way of substituted service through advertisement in the Daily Nation Newspaper. The court further allowed Mr Rao to continue as administrator of the company.
 23. Mr Rao was appointed administrator of the company on January 13, 2020. The plaintiff wants his removal for having neglected his statutory obligations specifically in terms of providing the statement of proposals to the company's creditors and for failing to convene the creditor's meeting.
 24. In his defence, the administrator asserted that the directors of the company have never submitted the statement of affairs as required by the Act and that in absence of the statement of affairs and creditors' list from the directors of the company, calling the initial creditors' meeting became a challenge.
 25. He further pleaded that the covid-19 pandemic crisis had restricted the assembly of people while virtual meetings did not end with any resolution. That on October 27, 2020, he filed the statement of proposals together with an update as at September 30, 2020 with the official receiver.



26. A reading of section 566 of the Act shows that an administrator of a company is required to make a statement setting out proposals for achieving the purpose of administration. That a copy of that statement is to be sent to every creditor and member of the company of whose claim and address the administrator is aware. All these should be effected not later than sixty days after the date on which the company enters administration.
27. Section 568 of the Act requires the administrator to ensure that each copy of his statement of proposals sent to a creditor in accordance with section 566(4)(b) is accompanied by an invitation to an initial creditors' meeting to be held not later than 70 days from when the company enters administration.
28. Section 568 (2) provides that the administrator shall present a copy to his statement of proposals to the initial creditors' meeting.
29. From the foregoing, it is clear that the administrator is required to make a statement of proposals within 60 days of his appointment, secondly have it sent to every creditor whom he is aware of and thirdly, call a creditor's meeting to discuss the proposal 70 days from his date of appointment.
30. In the present case, the administrator could have sent a proposal to the plaintiff within the stipulated time as he was a known creditor to him. Further, his term as administrator was extended by another 12 months from January 15, 2021. It is not clear what prevented him from preparing and sending a statement of proposal to the plaintiff and/or convening a creditor's meeting during that period.
31. The covid restrictions have greatly been decreased with physical meetings permitted to be held by the Ministry of Health.
32. Of further interest is that Mr Rao filed a statement of proposal together with an update as of September 30, 2020 with the official receiver on October 27, 2020 but failed to do the same with the plaintiff or the other company creditors.
33. What is to be inferred from the foregoing is that the administrator did fail in his statutory obligation to call an initial creditor's meeting and to prepare and send a proposal to known company creditors within the stipulated time period. There is no evidence that a virtual meeting was ever convened.
34. Section 591 of the Act provides that a creditor or member of a company under administration may apply to the court on the ground that the administrator is not performing the administrator's functions as quickly or as efficiently as is reasonably practicable.
35. Upon considering such an application, the court, under section 591, may make the following orders: -
 - i. regulate the administrator's performance or exercise of the administrator's functions or powers;
 - ii. require the administrator to do or not do a specified act;
 - iii. require a creditors' meeting to be held for a specified purpose;
 - (iv) end the appointment of an administrator;
 - iv. make provisions of a consequential nature.
36. The court has the discretion to make any of the above orders in this case.
37. Having considered all the circumstances of this case, I am of the view that to remove Mr Rao as administrator at this stage would be draconian. I would consider alternative remedies that would be beneficial to all concerned.



38. Accordingly, both applications are compromised as follows: -

- a. The directors of the company are hereby directed to provide the administrator with a statement of affairs particularly to ascertain the creditors in terms of section 564(2) of the Act within 14 days from the date of this ruling.
- b. The administrator is to send a proposal to the creditors within 60 days of receipt of the statement of affairs and call a creditor's meeting, whether a hybrid one or a physical one, 70 days after receipt of the statement of affairs. Time is of the essence.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

A. MABEYA, FCIArb

JUDGE

