



**Kimeto & Associates Advocates v KCB Bank Kenya Limited & 2  
others (Insolvency Petition E004 of 2019) [2022] KEHC 15677 (KLR)  
(Commercial and Tax) (25 November 2022) (Directions)**

Neutral citation: [2022] KEHC 15677 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY PETITION E004 OF 2019  
DO CHEPKWONY, J  
NOVEMBER 25, 2022  
IN THE MATTER OF: THE COMPANIES ACT, ACT NO.17 OF 2015  
AND  
IN THE MATTER OF: INSOLVENCY ACT NO.18 OF 2015  
AND  
IN THE MATTER OF: MUMIAS SUGAR COMPANY LIMITED**

**BETWEEN**

**KIMETO & ASSOCIATES ADVOCATES ..... APPLICANT**

**AND**

**KCB BANK KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**PONANGIPALLI VENKATA RAMANA RAO ..... 2<sup>ND</sup> RESPONDENT**

**MUMIAS SUGAR COMPANY LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**DIRECTIONS**

1. This matter came up for mention on 22<sup>nd</sup> November, 2022 for counsel for the parties herein to:
  - a. confirm compliance of directions issued on 26<sup>th</sup> November, 2022 on empanelment of a three Judge bench application.
  - b. take directions on the application dated 16<sup>th</sup> November, 2022 by the 2<sup>nd</sup> Respondent seeking that extension of his term as an Administration of 3<sup>rd</sup> Respondent.



2. According to Senior counsel, Mr. Kiragu Kimani, for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent they had received responses to the application dated 16<sup>th</sup> November, 2022 in the form of Notices of Preliminary Objection but he needed to speak about the other pending applications in the matter given its long history. To which counsel in agreement with him like Mr. Ondieki and Mr. Gicheha sought to have the application determined on priority basis and for prayer No.2 thereof to be allowed in the interim given that the term of administration had expired and required extension.
3. On the other hand, the other counsel in opposition thereof were of different view. M/S Kimeto, the Petitioner urged that the court is *functus officio* in regard to the application. Mr. Opwaka, counsel for 1<sup>st</sup> Creditor expressed the view that Section 594(2) of the [Insolvency Act](#) prevents the extension of term of administration after its expiry. Mr. Muite, counsel for the Interested Party sought for time to enable them respond and address the court on why they believe that the term of administration should not be extended by virtue of the Applicant's conduct. Others were of the view that there were older applications which were pending delivery of rulings which ought to be given precedence and the recent ones be made to wait on the queue.
4. After hearing the submissions by all the counsel present in this matter, and given that the chequered history of this matter displays itself in the number of pending applications in considering the directions to issue on which application to be given priority. I believe it would be prudent to first deal with the application dated 16<sup>th</sup> November, 2022 wherein the 2<sup>nd</sup> Respondent seeks the extension of his term as Administrator of the 3<sup>rd</sup> Respondent for purposes specified in the ruling dated 19<sup>th</sup> November, 2021 as it appears to be the most contested for now.
5. It is common ground that on 14<sup>th</sup> April, 2022, the court delivered a ruling removing the 2<sup>nd</sup> Respondent as an Administrator of 3<sup>rd</sup> Respondent but the said decision was stayed by the Court of Appeal. It is worth of note that this issue is still pending before the said superior court todate.
6. In addressing this issue, this court has sought refuge in the overriding objective provided for under Sections 1A and 1B together with the inherent power of the court provided for under Section 3A, all of the [Civil Procedure Act](#), which are meant to achieve justice for the parties who come to court. Therefore, by virtue of the said provisions, the court is under an obligation, in exercising the power conferred upon it so as to give effect to the overriding objective, and in order to attain this objective, it must strive towards ensuring the disposal of the business of the court in an effective, efficient, proportionate, affordable and timely manner while saving on the precious judicial time.
7. It is against this background, that I have read through the court record and all previous decisions made by this court, in the matter with respect to the prayers sought in the application dated 16<sup>th</sup> November, 2022. And having listened to respective counsel in their arguments on the same, I have given due consideration to the previous pronouncements by this court on the same subject.
8. In my view and with utmost respect to counsel on record, I seek to make reference to the ruling delivered on 28<sup>th</sup> July, 2022, in which, while addressing various prayers sought in an application dated 22<sup>nd</sup> July, 2022, Hon. Lady Justice Okwany pronounced that the orders of stay that had been granted by the Court of Appeal in respect of the orders issued by the Hon. Justice Mabeya on 14<sup>th</sup> April, 2022 are not equivalent to setting aside or overturning the same. The learned Judge added that unless the orders of 14<sup>th</sup> April, 2022 were varied and or otherwise reviewed, they still remain very "alive and kicking".
9. I wish to associate myself with the learned Judge's view and I see no reason of departing from her finding. I do reiterate that the Court of Appeal merely stayed the implementation of the orders dated



- 14<sup>th</sup> April, 2022 removing the 2<sup>nd</sup> Respondent as the 3<sup>rd</sup> Respondent's administrator and that remains the position until the orders of 14<sup>th</sup> April, 2022 are otherwise set aside and or reviewed.
10. I am therefore of the view that were this court to delve in considering other grounds which depart from or are contra the ruling delivered on 14<sup>th</sup> April, 2022, such as considering the extension of the term of administration, the court would be serving its own cake and eating it, and a fortiori, the court would be sitting on Judgment of its own decision. An opinion departing from the expression of this court's ruling dated 14<sup>th</sup> April, 2022 would legally flow from the Court of Appeal or a court superior to this court. Having said that stay of this court's ruling by the Court of Appeal does not connote its setting aside until such time that the ruling dated 14<sup>th</sup> April, 2022 is set aside and or reviewed, it would be moot and in want of jurisdiction for this court to consider a different view that is expressed in the said ruling.
  11. It is against this back drop that this court expressed itself as to the continued administration of the 2<sup>nd</sup> Respondent in its ruling dated 14<sup>th</sup> April, 2022 which decision is yet to be set aside. In conclusion, since the foregoing is a jurisdictional issue, it would be an academic exercise to deliberate on whether the court may or may not extend the term of administration as sought in the application dated 16<sup>th</sup> November, 2022, and hence do not wish to engage the parties in a tussle without jurisdiction. I am of the opinion that since the application dated 16<sup>th</sup> November, 2022 goes to the crux of the court's jurisdiction, the same can be addressed *suo moto* at this stage.
  12. It is now upto the Court of Appeal to consider and direct otherwise than it is in the ruling dated 14<sup>th</sup> April, 2022, and any other pertinent order thereof. That having been said, it is hereby directed that the 2<sup>nd</sup> Respondent is at liberty to move the Court of Appeal accordingly for the orders he seeks in the application dated 16<sup>th</sup> November, 2022. The earlier he moves the said court may save the day.
  13. Lastly, the other issue pending from the oral submissions made by the counsel in this case is which application of the pending applications in this matter ought to take precedence. The Petitioner has requested that due to public interest in the matter, the court considers the possibility of referring the matter to the Honourable Chief Justice for the empanelment of a three Judge bench in the matter. So far there are two applications of this nature already filed in the matter; one is dated 22<sup>nd</sup> July, 2022 while the other is dated 20<sup>th</sup> November, 2022. There are applications for joinder of parties which are quite a number and each advocate has urges the court to find their respective application for joinder as urgent as yesterday. It is my humble view that the applications seeking empanelment of a three-Judge bench take precedence so that if the court finds merit in them and eventually a panel of Judges is constituted to hear the matter, all other pending applications and issues arising therefrom can be addressed by such a constituted bench. Thus the applications for joinder and other issues be held in abeyance pending the empanelment of a bench or otherwise.
  14. However, there are applications seeking to cite some of the parties herein for contempt which I am persuaded can be heard and determined in contemporaneity with the application for empanelment of a bench of Judges. This is so because the court has a duty to uphold its dignity and punish those who defy it. Such is an issue which has to be addressed by this court as opposed to the anticipated bench.
  15. In the premises, the following orders do hereby issue;-
    - a. The 2<sup>nd</sup> Respondent be and is hereby directed to move the Court of Appeal for the orders and directions it seeks in the application dated 16<sup>th</sup> September, 2022.
    - b. That the applications dated 27<sup>th</sup> July, 2022 and 20<sup>th</sup> November, 2022 for empanelment be heard first and canvassed by way of written submissions.



- c. Parties to file responses and submissions on the empanelment applications within Twenty One (21) days from date hereof.
- d. The applications for contempt to be heard together with the applications for empanelment and parties are as well granted leave to file responses and submissions on the pending contempt proceedings. Each party is granted seven (7) days to comply.
- e. Further directions to issue on 10<sup>th</sup> February, 2023.

It is so ordered.

**DIRECTIONS DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Kimeto - Petitioner

Mr. Wesley Gichaba counsel for Sarai Group Limited

Mr. James Tugen counsel for 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Mr. Kiragu (S.C) counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent

M/S Sheunda holding brief for Mr. Osundwa counsel of the 3<sup>rd</sup> Respondent

Mr. Brian Otieno counsel for Mr. Moses Otieno - Creditor

Mr. Edmund Wesonga holding brief for Mr. Wekesa for the Creditor (Wekesa & Sammy Advocate)

M/S Owuor counsel for Proposed Interested Party – Mr. C. B.

M/S Bundi holding brief for Mr. P. Muite and Mr. Gitonga counsel for Wesonga – Kenya Sugar Co. Ltd.

Mr. Muthuri holding brief for Mr. Ismail for vertox Resources Incorporation – Creditor

Mrs. Gichuru counsel for Gakuambe Farmers Co-operative Society.

M/S Mumbi holding brief for Mr. Ansala counsel for Ex-employees of Mumias Sugar Co.

Mr. Chebii holding brief for Mr. Nyachoga for Omaera Pharmaceuticals Ltd.

