



**Noor v African Banking Corporation Limited (Insolvency Cause E055 of 2021)
[2022] KEHC 15754 (KLR) (Commercial and Tax) (25 November 2022) (Directions)**

Neutral citation: [2022] KEHC 15754 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E055 OF 2021
DO CHEPKWONY, J
NOVEMBER 25, 2022**

BETWEEN

HAMZA ALI NOOR PLAINTIFF

AND

AFRICAN BANKING CORPORATION LIMITED CREDITOR

DIRECTIONS

1. On November 1, 2022, this matter came up for counsel for parties to confirm filing of submissions on the debtor's motion. However, an issue arose with regard to a related matter being Insolvency Cause No 054 of 2021 which was being handled by a different court. This was raised Mr Hans Oichoe, counsel for the debtor and Mr Gakunga, counsel for the creditor went on to explain the proceedings in each of the files.
2. Having listened to submissions made by counsels for the parties, what I have gathered is that there are two petitions file against the debtor, being Insolvency Cause No E054 of 2021 and the present Insolvency No E055 of 2021, and both are challenging the appointment of an administrator.
3. It was submitted that there is a pending application in Insolvency Cause No E054 of 2022, wherein the court directed on the filing of submissions. It was suggested that the two insolvency petitions be heard together before one court although the creditor's counsel on record suggested that the correct procedure would have been for the debtor to file an application to set aside the statutory demands but not stay of proceedings.
4. In my view, where appropriate, the court can invoke its jurisdiction under order 11 rule 3 of the [Civil Procedure Rules](#) and direct the consolidation of suits upon the court's satisfaction that there are common questions of law or fact arising in the suits under question or that the relief sought arise out of the same transaction or series of transactions. In the present situation, it is undisputed that the two



petitions being Insolvency Cause No E055 of 2021 and E054 of 2021 are against the same debtor and there is likelihood of material similarity on questions of both law and facts. There is therefore the risk of arriving at conflicting decisions if the petitions proceed before two different courts. Hence, for consistency and harmonious determination, the two matters ought to be consolidated and proceed before the same court.

5. Furthermore, given that there are two applications pending determination, one in Insolvency Cause E054 of 2021 and the other being E055 of 2021, to save on judicial time, it would be prudent for the two applications to be canvassed together. In the meantime, it would be contra the right to be heard to pronounce myself on the merit of either applications. That having being said, for a just determination of the issues pending therein, the following directions to issue:-
 - a. An order be and is hereby issued for the consolidation of Insolvency Cause No E055 of 2021 and Insolvency Cause No E055 of 2021 (given that it is unclear whether the two matters were ever consolidated).
 - b. That the two pending applications in the insolvency causes be canvassed jointly by way of written submissions. However, given that such directions had issued in Insolvency Cause E054 of 2022, parties are granted leave to comply with directions earlier issued on filing of submissions.
 - c. The creditor is granted seven (7) days to file and serve a response to the application dated June 27, 2022 in Insolvency Cause No E055 of 2021.
 - d. The debtor is likewise granted leave to file supplementary affidavit, if need be, alongside written submissions within fourteen (14) days of being served.
 - e. Thereafter, the creditor shall equally have fourteen (14) days to file and serve written submission, upon being served with the debtor's submissions.
 - f. That the two insolvency causes being E054 of 2021 and E055 of 2021 be mentioned on February 7, 2022 to confirm compliance and for highlighting of submissions.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF NOVEMBER, 2022.

D O CHEPKWONY

JUDGE

In the presence of:

Mr Gakunga counsel for the Creditor

Mr Hans Oichui

Court Assistant - Sakina

