



**Rao v Athi River Steel Plant Limited (Miscellaneous Application E384 of 2022)
[2022] KEHC 16102 (KLR) (Commercial and Tax) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16102 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E384 OF 2022
WA OKWANY, J
NOVEMBER 24, 2022**

BETWEEN

PONANGIPALLI VENKATA RAMANA RAO APPLICANT

AND

ATHI RIVER STEEL PLANT LIMITED RESPONDENT

RULING

1. This ruling is in respect to the application dated May 16, 2022 wherein the applicant Ponangipalli Venkata Rao seeks orders for the extension his term as the receiver over Athi River Steel Plant Limited (in receivership) until further orders of this court.
2. The application is supported by the applicant's affidavit and is premised on the grounds that:-
 1. The applicant is a registered insolvency practitioner who was appointed as receiver over Athi River Steel Plant Limited (in receivership) ("the company") by the Bank of Africa Kenya Limited, NCBA Bank Kenya PLC (formerly Commercial Bank of Africa), I & M Bank and KCB Bank Kenya Limited in terms of deed of appointment of receiver on May 18, 2018.
 2. The Bank of Africa Kenya Limited, NCBA Bank Kenya PLC (formerly Commercial Bank of Africa), I & M Bank and KCB Bank Kenya Limited (hereinafter referred to as "the lenders") appointed the applicant as receiver over the company of May 18, 2018, pursuant to the powers expressly conferred in the lenders by various debentures executed by the company.
 3. All the debentures relied upon by the lenders pre-date January 18, 2016, in particular debenture(s) dated October 7, 2010(to secure the sum of Kshs 350,000,000 advanced by BOA); dated April 30, 2012 as well as a further debenture dated January 30, 2014(to secure the sum of Kshs 1,200,000,000 and Kshs 950,000,000 advanced by CBA); dated January 30,



2014(to secure the sum of Kshs 1.515,000,000 advanced by I & M); dated December 30, 2010(to secure the sum of Kshs 800,000,000 advanced by KCB) and a further debenture dated January 30, 2014 (to secure the sum of Kshs 580,000,000 advanced by KCB).

4. The provisions of section 690(4) of the *Insolvency Act* 2015 empowered the holders of a floating charge to appoint an “administrative receiver,” so long as the floating charge in question was created before the coming into force of the *Insolvency Act*. In that regard, the applicant was duly appointed as receiver with administrative power over the company.
 5. The deed of appointment of the receiver by the lenders made reference to the debentures executed by Athi River Steel Plant Limited and conferred various powers on the receiver in accordance with the debentures executed by the company.
 6. The applicant’s first term as receiver over the company came to an end on May 18, 2020 and upon an application to the High Court it was extended by a further 12 months to June 22, 2021 by an order of the court delivered on June 22, 2020.
 7. Prior to the expiry of the receiver’s second term on June 22, 2021, the applicants sought a further extension of the receivership terms by 12 months through an application dated July 27, 2021 and by way of this court dated July 30, 2022 the period was further extended until further or other orders are made by the court.
 8. To date, the company remains in default to the lenders in the sum of over Kshs 7.577 billion, which sum continues to accrue interest. The lenders are desirous of having the applicant continue discharging his duties as a receiver by extending his term for a further 12 months.
 9. Despite the outstanding sums, there has been no concrete plan and/or offer from the company’s director and/or the company on how it purposes to effect payment of these sums to the lenders. Therefore, should the receiver term stand terminated, there is a real likelihood that the company will be unable to repay the sums owed to the lenders.
 10. Despite the lack of a concrete plan for repayment from the company, during the past two terms, the receiver has been able revive the operations of the plant and is running the production above the breakeven levels with the result that the receiver has been able to source an interested party to buy the assets of the company.
 11. In addition to the financing secured from the lenders, the receiver proposes to undertake the following actions to ensure that the company remains a going concern, and is able to meet its obligations, namely:-
 - a. Rehabilitating various areas of production to improve revenue levels to improve payments to the secured creditors; and
 - b. Keep the plant in good condition in order to attract interested parties to buy the assets.
 12. Receivership offers the most viable option to have the company remain as a going concern, and to enable it to meet its obligations to the lenders and employees, and it is for the above reason that it is necessary that the receiver’s term is extended.
 13. Should the receiver’s term stand terminated, there is a likelihood that the company’s assets will be exposed to the risk of being neglected to the detriment of the all shareholders.
3. The respondent opposed the application through the replying affidavit of its Director Mr Ravinder Kumar Gupta who avers:-



1. That I am aware and I am informed by my advocates on record which information I believe to be true that the applicant is on record in Machakos High Court Insolvency Case No 16 of 2018 and the resultant Civil appeal No 592 of 2019 that is not bound by the provisions of the *Insolvency Act*, 2015 and the *Insolvency Regulations* 2016. His consistent position in these two matters is that his appointment was under debentures that pre-dated the *Insolvency Act* 2015 and therefore only the repealed *Companies Act*, cap 486 applies to his “receivership” over the respondent company. Annexed hereto and collectively marked as “RG1” are true copies of the ruling and Court of Appeal submissions.
2. That I am advised by my advocates on record which advice I verily believe to be true that the applicant cannot approbate and reprobate before the honourable court. By not applying for extension of time for his purported receivership under the provisions of the *Insolvency Act* 2015 and the *Insolvency Regulations* 2016, the applicant is abusing the court process having convinced the High Court in the said Machakos High Court Insolvency Case No 16 of 2018 that he is not subject to the *Insolvency Act* 2015. That decision is now being reviewed by the Court of Appeal where he has opposed the appeal to similar grounds.
3. That without prejudice to the foregoing the applicant has been unwilling to provide information on his affairs to the directors and creditors of the company some of whom has to get court orders compelling him to do so. The applicant is undoubtedly under a legal obligation to provide an account of his affairs to the directors of the respondent company, the court, creditors and the official receiver. He is in blatant breach of that obligation and is consequently not deserving of the orders sought. Annexed hereto and marked “RG 2” is a copy of a ruling to that effect.
4. The applicant canvassed the application by way of written submissions while the respondent opted to rely on its replying affidavit.
5. I have considered the pleadings filed herein and the applicants submissions. This is a straight forward application for the extension of the receiver’s term.
6. It was not disputed that the company herein was placed under receivership which receivership is yet to be lifted. It was also not disputed that the debt has not been repaid.
7. In *KSC International Limited (under receivership) & 5 others vs Bank of Africa (K) Limited & 6 others* [2018] eKLR, it was held that:-

“Under Companies Act, cap 486, until receivership is lifted by an order of court, or until the debt owed is paid in full or otherwise the receivership is lifted, receivership of a Company Act, 486, did not provide for an automatic expiry of any receivership nor did it set a time limit of any receiver and manager appointed under the Companies Act, Cap 486 to warrant any application for extension of term of a receiver appointed under the Companies Act. I therefore find and hold that the applicants as receivers having been operating under the Companies Act Cap 486 and not under the Insolvency Act, as contested by the respondents, the applicants were not and are not required to seek any extension of their term as receivers and managers of the 1st plaintiff. The contention by respondents that the applicant’s term as receiver and managers of the 1st plaintiff expired on January 18, 2017 is without legal support. I also find the applicants filing of HCCC Misc No 141 of 2018 seeking *inter-alia*- extension of term of the pending receivership assignment under regulation 141 of Insolvency Act, which has since been withdrawn, was not necessary and was superfluous.....”



8. Guided by the decision in the above cited case, I find that the applicant has made out a case for the extension of his term.
9. Consequently, I allow the instant application with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF NOVEMBER 2022.

W. A. OKWANY

JUDGE

In the presence of: -

Mr. Kamara for Lubano for applicant.

Ms Munene for Koech for respondent Company

Court Assistant- Sylvia

