



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Liberty Assurance Company Limited (Winding Up Cause 29 of 2004)
[2021] KEHC 163 (KLR) (Commercial and Tax) (22 October 2021) (Ruling)**

Neutral citation: [2021] KEHC 163 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

WINDING UP CAUSE 29 OF 2004

A MABEYA, J

OCTOBER 22, 2021

IN THE MATTER OF LIBERTY ASSURANCE COMPANY LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT CAP 486, LAWS OF KENYA

AND

IN THE MATTER OF INSURANCE ACT CAP 487 LAWS OF KENYA

IN THE MATTER OF ORDER 1 R 10 (2) SECTION 3A OF CIVIL PROCEDURE ACT

AND

**IN THE MATTER OF THE ESTATE OF THE LATE JIM
CHOGE PROPOSED INTERESTED PARTY/APPLICANT**

RULING

1. This ruling is in respect of the is a Motion on Notice dated 28/10/2019. It was brought under Article 159 (2) (d) of the [Constitution 2010](#), section 3A, and Order 1 rule 10 [Cap 21](#), Laws of Kenya.
2. It sought orders, inter alia, that the applicant be joined in this matter as an interested party. The other orders sought were in relation to an order made on 21/1/2005 which appointed the Official Receiver as the provisional liquidator of the Liberty Assurance Co. Ltd (“the Company”).
3. The applicant sought that the said orders be set aside or reviewed and that the Company be reinstated to the administrators of the Estate of the deceased herein. It also sought orders that the Company be ordered to have the names of the administrators reflected as directors/shareholders of the Company, and that this matter be settled or dismissed for being time barred.
4. The application was supported by the affidavit of Noreen Shariff Choge sworn on 28/10/2019. The deponent was a director/shareholder of the Company and joint administrator of the deceased’s estate together with Eva Cherogony and Byron Kipngetchi Gawon Choge. It was based on the grounds



that the deceased was a director of Lincoln Management Limited, Noreen Shariff Limited & Pembeni Limited all who are directors in the Company.

5. That the deceased's estate was the subject of litigation in Succession Cause No. 934 of 2008 and Judicial Review Application No. 570 of 2017. That the creditors in this cause had all been settled and the matter had been dormant for more than 15 years. That the Company was listed as being part of the deceased's estate in the aforesaid Succession Cause and that the orders complained of were frustrating the administration of the estate.
6. The application was opposed through the affidavit of Beatrice Osicho sworn on 10/12/2019. She is a Senior State Counsel in the office of the Official Receiver in insolvency. That the Official Receiver was appointed after the statutory management of the Commissioner of Insurance found that the Company had failed to discharge its functions under the *Insurance Act*.
7. That the Official Receiver's powers were limited to collecting and preserving the known assets of the Company. That the former directors failed to submit to the Official Receiver a Statement of Affairs or any relevant information about the Company, and that they remained untraceable.
8. That the deceased was a director of the Company and that position cannot be devolved to his estate under the doctrine of corporate personality. That insolvency is an ongoing process and cannot be barred by time. That the applicant did not demonstrate that the Receiver was not acting in the best interests of the Company.
9. On 20/1/2021, the parties were directed to file their respective submissions but failed to do so. The application was therefore determined without the benefit of Counsel's submissions. In this regard, I will entirely rely on the depositions on record as well as the record itself.
10. The applicant seeks to be joined as a party to this suit as an interested party. An interested party was defined in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] eKLR* as:-

“... one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause ...”
11. The applicant's case was that she was a director of the subject Company and that the Company was part of the deceased's assets in the deceased's Succession Cause. That the deceased having been a director of the Company, the application was merited.
12. Firstly, the Form 12 produced as “NSC 1” did not disclose the deponent as a director of the Company. The entity with some semblance to her name was Noreen Shariff Limited which was listed as both a director and shareholder of the Company. Obviously she is not that entity.
13. Secondly, there was nothing on record to show that the Company had been listed as part of the estate of the late Jim Choge. Either the confirmed grant or the application for confirmation should have been produced to disclose that state of affairs. In any event, even if those pleadings or documents were produced, they could not assist as Jim Choge was only a director of the Company. That being the case, his directorship in the Company ceased on his demise. It never succeeded him
14. Thirdly, the Company is a legal person capable of bringing proceedings in its own name. It is separate and distinct from its directors and shareholders. The subject Company has capacity to articulate its



own interests independent of its directors. If the applicant was minded, she should have approached the Official Receiver for the necessary action.

15. Accordingly, I find that the applicant has not established any interest in the matter that would necessitate its being enjoined in this matter. That being the case, all the other prayers collapse as a consequence.
16. As regards the prayer to mark this suit as settled and other consequential orders in the application, the applicant contended that all the creditors had been settled. However, there was no evidence on record to support that contention.
17. I will not however turn a blind eye to the fact that almost 15 years later, this Cause has remained unprosecuted and the Company continues to be under liquidation. There is no recent report by the Official Receiver indicating the status of affairs for the Company, more so in relation to settlement of debts.
18. In this regard, I find that the application is without merit and proceed to dismiss the same with no orders as to costs.
19. However, in the exercise of this courts inherent jurisdiction, the Official Receiver is hereby ordered to file in court an updated report reflecting the status of the Company within 60 days of the date hereof.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF OCTOBER, 2021.

A. MABEYA, FCI Arb

JUDGE

