



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND ADMIRALTY DIVISION

MISC. APPLICATION NO. 126 OF 2014

IN THE MATTER OF THE INSURANCE ACT (CAP 487 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF STANDARD ASSURANCE COMPANY OF KENYA LIMITED (Under Statutory Management)

GODFREY K. KIPTUM

(THE ACTING COMMISSIONER OF INSURANCE.....APPLICANT

AND

IN THE MATTER OF SECTION 67(C) (2) & (3) AND 179 OF THE INSURANCE ACT

CHAPTER 487 OF THE LAWS OF KENYA

AND

IN THE MATTER OF COMPANIES (HIGH COURT) RULES OF THE COMPANIES ACT,

CHAPTER 486 OF THE LAWS OF KENYA

RULING

1. The subject Application herein is a chamber summons Application dated 27th December 2017. The Applicant is seeking for orders that, the term of the Policy Holders Compensation Fund (PCF) as a Statutory Manager and the Moratorium with respect to the Standard Assurance (K) Ltd. (under Statutory Management herein "The Insurer" be extended for a further period of one (1) year pending the hearing and determination of the Winding up Petition or until so ordered by the Court. That there be quarterly periodic mentions to update the Court on the status of the winding up proceedings and liberty to apply. The costs of the Application be in the cause.

2. The Application is brought under the provisions of Section 67 (c) (2) & (3) (10) and 179 of the Insurance Act, Chapter 487 of the Laws of Kenya, the inherent jurisdiction and power of this Honourable Court, Section 3A of the Civil Procedure Act and Order 52 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. It is supported by the grounds on the face of it and the Affidavit dated 27th December 2017 sworn by Godfrey K. Kiptum, the Commissioner of Insurance and the Chief Executive Officer of the Insurance Regulation Authority.

3. The Applicant avers that the Insurer was placed under Statutory Management on 16th September 2011. That the term of the Policyholders Compensation Fund (PCF) as a statutory manager and the Moratorium was last extended by the Court on 25th July 2017 with effect from the 27th June 2017 to 27th December 2017 for a period of six (6) months.

4. The purpose for which the Application seeks for the extension is to facilitate the management of the assets of the Insurer and ensure orderly distribution thereof once the Wind up proceedings are instituted. That the delay in filing the Winding up Petition has been occasioned by the need to comply with the requirements of the Insolvency Act 2015 and the Insolvency Regulations of 2016, with regard to Insolvency Practitioner, but, the Petition is expected to be filed within seven (7) days of date of this Application.

5. That in the meantime, it will be crucial to grant the orders sought to protect the integrity of the Winding up process and to avoid a lacuna in the management of the Insurer and its assets. If the orders are not granted, then the mandate of the Statutory Manager will lapse, the Moratorium will be lifted and there shall be a run on the creditors assets to the detriment of the Insurer, the creditors, policyholders and the insurance beneficiaries.

6. The Applicant annexed a Preliminary Report dated 11th April 2017, issued by the Policyholders Compensation Fund (PCF) to the Affidavit in support of the Application indicating that it had reviewed the status of the affairs of the Insurer and concluded that the Insurer should be wound up. That in instructions have been given to the law firm on record herein to proceed and institute the winding up proceedings and the Petition has been presented to the Registry for assessment and will be soon filed as earlier stated.

7. I have considered the Application against the Ruling delivered by the Court on 12th April 2017 on a similar Application. In that ruling, the Court observed that the prayers for extension of the Statutory Managers Mandate and the Moratorium has been a subject of various Applications from as far as 28th March 2014, a period of about 4 years with total of over 6 Applications. As far as 5th May 2016, the Court summoned Mr. Sammy Mutua Makove, the Commissioner of Insurance (as he then was) for cross examination on matters deposed in the affidavit in support of the extension of the Statutory Managers term and the Moratorium. He did not appear. On 12th April 2017, when this Court extended the said period, it ordered the Chief Executive Officer of Insurance Regulatory Authority to appear for cross examination.

8. On 25th July 2017, the Court examined the Manager in charge of supervision at Insurance Regulatory Authority on the status of the Insurer. It became evidence from his evidence that, the Insurer has been under management of three different Receivers, since 2009 and who have recommended its Winding up. On the said date, the witness told the Court that a lawyer had been instructed to file a Petition for the Winding up of the insurer. The Statutory manager sought for 6 months extension which the Court allowed with effect from 27th June 2017 to 27th January 2017.

9. It is surprising that, even after requesting for the last opportunity to file Winding up proceedings, the Applicant did nothing and only woke up with this Application filed under a certificate of urgency and on the last date of the expiry of their Mandate and Moratorium.

10. Even more so, the Applicant is seeking for yet another one (1) years extension. It is therefore clear that the Applicants are no longer serious with the management of the Insurer and simply want to keep extending their mandate without a reasonable and justifiable cause. There are no good reasons advanced as to why firstly, the Petition was not filed within the last six (6) months as indicated and secondly, the delay why one year extension is sought.

11. I note that the Insurer has been under several Statutory Managers and moratorium with effect from 13th February 2009 to date, a period of about eight (8) years. In that regard, I find no merit in this Application as the Winding up process should have started by now.

12. However, I note that, the Applicant avers that they have instructed an Advocate and the process of filing a Petition is underway as the assessment fees has been done.

13. In that case, I find that in the interest of justice, I hereby extent the term of the Statutory manager (PCF) and the Moratorium. I therefore extent the same as the last extension for a period of one (1) month with effect from the date of these orders, to enable the Applicant finalize the Winding up process and/or orders necessary to facilitate the expeditious disposal of this matter.

14. It is so ordered.

Dated, delivered and signed in open court this 13th day of February 2018.

G.L. NZIOKA

JUDGE

In the presence of:

Ms. Lwandi holding brief for Mr. L. M. Kambuni for the Applicant

Langat.....Court Assistant