



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

INSOLVENCY PETITION NO. 1 OF 2018

IN THE MATTER OF THE INSOLVENCY ACT, 2015

AND

IN THE MATTER OF THE INSURANCE ACT, CHAPTER 487 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE WINDING UP OF STANDARD ASSURANCE KENYA LIMITED

(UNDER STATUTORY MANAGEMENT)

RULING

[1] The Commissioner of Insurance, **Godfrey Kimaiyo Kiptum**, filed the Petition herein, dated **3 January 2018** on behalf of the **Insurance Regulatory Authority**, seeking the liquidation of **Standard Assurance Kenya Limited** (Under Statutory Management) on the grounds, inter alia, that it had failed to satisfy several judgments entered against it, arising out of insurance policies issued by it. Pending the hearing and determination of the Petition, the Petitioner sought orders, vide the Notice of Motion dated **1 March 2018**, as hereunder:

[a] Spent

[b] That the Court be pleased to issue an Interim Liquidation Order against **Standard Assurance Kenya Limited**.

[c] That the **Policy Holders Compensation Fund** be appointed as the Interim Liquidator of **Standard Assurance Kenya Limited**.

[d] That there be liberty to apply.

[2] The Notice of Motion was premised on the grounds that the term of the Statutory Manager, the **Policy Holders Compensation Fund**, as well as the Moratorium granted in **High Court Miscellaneous Civil Case No. 126 of 2014**, was extended for a further 30 days with effect from **13 February 2018** to enable the finalization of the winding up process; and that it is in the interest of justice that an Interim Liquidator be appointed to ensure the preservation of the assets of **Standard Assurance Kenya Limited** pending the hearing and determination of the Petition. The application was also supported by the affidavit of **Godfrey Kimaiyo Kiptum**, sworn on **1 March 2018**.

[3] The background of the matter, as can be gleaned from the Supporting Affidavit, is that **Standard Assurance Kenya Ltd** (Under Statutory Management, hereafter "the Company"), was incorporated under the **Companies Act, Chapter 486** of the **Laws of Kenya** (now repealed), to carry on all kinds of insurance business, particularly life, fire, marine, accident, employer's liability, workmen's compensation, disease, sickness, survivorship, burglary, robbery, theft, transit insurance and to undertake the other objects set out in the Memorandum of Association. It was averred that the Company operated relatively well in regard to compliance with the various requirements of the **Insurance Act, Chapter 487** of the **Laws of Kenya** until the year **2006**, when it emerged that it was facing various compliance issues as well as liquidity challenges. Consequently, the Company was placed under Statutory Management on **11 March 2009**.

[4] It was further averred by **Mr. Kiptum** that, although the Company was given ample opportunity to improve and comply with the minimum statutory requirements set out in the **Insurance Act**, it failed to do so. Hence, the Board of the **Insurance Regulatory Authority** ultimately approved the recommendation by the Statutory Manager that the Company be wound up. However, the initial Winding Up Petition that was filed by the **Insurance Regulatory Authority** was resisted by the shareholders and had to be withdrawn. Meanwhile, the Company continued to be under Statutory Management; and by **31 July 2014**, four Statutory Managers had been appointed to manage the

Company in the hopes that they would turn it around into profitability, but to no avail. Ultimately, the **Policy Holders Compensation Fund** was given the mandate to manage the Company. Its term was extended severally, though no significant progress was made to revive the Company; the last extension being the one made on the order of **Nzioka, J.** on **13 February 2018** for a period of 30 days. Accordingly, the term of the Statutory Manager and the Moratorium is set to expire on **14 March 2018**; and to protect and preserve the assets and affairs of the Company, this application has been filed for the appointment of an Interim Liquidator.

[5] The application was brought *ex parte* pursuant to **Sections 123 and 179(2A)** of the **Insurance Act**; **Sections 423, and 437(1)** of the **Insolvency Act**; and **Order 51 Rule 1** of the **Civil Procedure Act**, as well as all other enabling provisions of the Law. **Section 123** of the **Insurance Act**, donates the power to the Commissioner of Insurance to file a petition for the winding up of an insurance company on the grounds, inter alia, that it is unable to pay its debts; while **Section 179(2A)** provides for the establishment of the **Policy Holders Compensation Fund**, whose main function is to provide compensation to the claimants of insolvent insurance companies.

[6] A petition having been filed for the liquidation of the Company, and having perused and considered the averments in the Supporting Affidavit and the documents annexed thereto, I am satisfied that good cause has been shown to warrant the issuance of an Interim Liquidation Order herein as has been sought, and for the appointment of an Interim Liquidator. It is however noteworthy that although the Board of Trustees of the proposed Interim Liquidator, **Policy Holders Compensation Fund** is mandated, by dint of **Section 179(2A)(e)** of the **Insurance Act** to "**...liquidate an insurer as may be ordered by the Court...**" for purposes of the **Insurance Act**, there is nothing in the documents exhibited herein to show that the said Board is an authorized insolvency practitioner for purposes of the **Insolvency Act**, granted that **Section 437(2)** of the **Insolvency Act** is explicit that:

"Only the Official Receiver or an authorized insolvency practitioner is eligible for appointment as a provisional liquidator."

[7] In the premises, I would direct that the **Official Receiver** be appointed as the Interim Liquidator, noting that he, in turn, has the power, pursuant to **Section 439** of the **Insolvency Act**, to appoint the **Policy Holders Compensation Fund** as the Interim Liquidator, if need be. Hence, the Orders that commend themselves to me, and which I would issue, are that:

[a] An Interim Liquidation Order be and is hereby issued in respect of the Company, **Standard Assurance Kenya Limited**;

[b] That the Official Receiver be appointed as the Provisional Liquidator of **Standard Assurance Kenya Limited**;

[c] That there be liberty to apply.

It is so ordered.

SIGNED, DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MARCH, 2018

OLGA SEWE

JUDGE