



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

INSOLVENCY PETITION NO.24 OF 2017

IN THE MATTER OF SMALL AND MEDIUM ENTREPRENEURIAL RESOURCE CENTRE LIMITED

IN THE MATTER OF THE INSOLVENCY ACT NO18 OF 2015

R U L I N G

The Applicant filed Notice of Motion dated 1st March 2018 seeking the following orders:-

1. That this Court be pleased to issue an administration order in respect of **SMALL AND MEDIUM ENTREPRENEURIAL RESOURCE CENTRE LIMITED**.
2. That this Court to appoint a qualified Administrator to manage the affairs of **SMALL AND MEDIUM ENTREPRENEURIAL RESOURCE CENTRE LTD** and especially the farms within Kajiado County.

Grounds on the face of the application are that, the 57 creditors listed believe that the Company's farms in Kajiado County are viable save for mismanagement; and that if the company is managed well; creditors debts will paid; that better outcome will be achieved if the company under administration.

The application is supported by the Affidavit of Robert Otieno Gero, one of the creditors herein who is authorized to swear the affidavit on behalf of 57 creditors listed herein.

He averred that they have learned of the petition of the company herein and that all the creditors stand to suffer irreparable harm if the company is wound up.

That the cumulative indebtedness of the company to the creditors herein is Kshs. 32,899,000.

He averred that the company has been managing green houses for agricultural production at Kajiado County three sites namely Kilimo Garden1, Kilimo Garden2 and Betany; that the management of the green houses is ongoing under the management of the company. He stated that some of the green houses are disused and/or vandalized.

He averred that with proper management, the project is viable. He urged the Court to appoint a competent Administrator.

The Applicants filed submissions restating grounds on the face of the application and averments in the Supporting Affidavit.

The Petitioner never filed response to the application but filed written submissions. Petitioner submitted that Kshs. 21,939,188.12 is due and owing from the company herein and that Statutory Notice was issued to the company on 10th October 2017 and no response to the petition has been filed.

That the only effort made by the company was a meeting held on 15th January 2018 where it admitted owing Kshs. 12,000,000 and undertook to pay in 90 days.

The Respondent averred that since the company has not made any commitment to pay the admitted amount it would be in the interest of justice to liquidate the company and an official receiver be appointed.

I have considered the application herein. What I wish to consider is whether placing the company herein under administration is likely to achieve better results in settling debts owing to all creditors herein.

Reason given for failure to meet financial obligations by the Defendant are mismanagement of the company. The Applicant contends that the business in Kajiado is viable and that it would run well if properly managed. The averments have not been challenged by the Respondent/Petitioner.

Upon perusal of documents filed and considering averments in the affidavits filed, I find that the Applicant has established that there are high chances that placing the company herein under administration will achieve more results than winding up of the company. It is not disputed that the creditors herein are owed by the company herein. It would be in the interest of justice to adopt a path that would benefit both the company and the creditors. This can be achieved by giving an opportunity to the company to continue running as creditors are being paid.

It would therefore be in the interest of justice to appoint Administrator to manage the affairs of the company herein.

FINAL ORDER

1. Administration order do issue against **SMALL AND MEDIUM ENTREPRENEURIAL RESOURCE CENTRE LIMITED.**
2. That the Official Receiver do appoint an Administrator from the Registered Insolvency Practitioners to act as Administrator for **SMALL AND MEDIUM ENTREPRENEURIAL RESOURCE CENTRE LIMITED.**
3. Mention on 11/10/2018 for status report by the Official Receiver.
4. Costs of this application in the cause.

Ruling dated and delivered at Nairobi this 31st day of July, 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

CATHERINE: **COURT ASSISTANT**

MR. MAKORI: **COUNSEL FOR PETITIONER**

MR. BOSIRE H/B FOR MR. MAKORI FOR CREDITOR/APPLICANT

NO APPEARANCE FOR THE COMPANY