



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
MISCELLANEOUS CIVIL APPLICATION NO 547 OF 2012
IN THE MATTER OF BLUESHIELD INSURANCE COMPANY LTD
(UNDER STATUTORY MANAGEMENT)

AND

IN THE MATTER OF THE COMPANIES ACT (CAP 486 OF THE LAWS OF KENYA)

AND

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

SAMMY MAKOVE COMMISSIONER FOR
INSURANCE.....APPLICANT/RESPONDENT

Versus

BLUE SHIELD INSURANCE CO LTD (UNDER STATUTORY MANAGEMENT).....
RESPONDENT/RESPONDENT

AND

NAOMI WANJIKUMAINA T/A WANJIKUMAINA & CO ADVOCATES.....INTERESTED
PARTY

RULING

[1] Before the Court for determination is the application dated 8th July 2014. The significant orders sought in the application are inter alia;

1. An injunction directing the Applicant/1st Respondent by himself, his officers, and agents to forthwith withdraw, cancel and reverse the unlawful and illegal removal of the Statutory Manager of the Respondent done by the Applicant on 4th July 2014;
2. Consequent to order (1) above, the Honourable Court be pleased to grant orders restraining the Applicant/1st Respondent from interfering with the Statutory Manager's term, work, and office until January 23rd 2015 as ordered by the Court on 4th July 2014;
3. The Honourable Court be pleased to grant orders directing the Applicant/1st Respondent to show cause why he should not be committed to civil jail for being in contempt of the Court;

4. **That the costs of this application be met by the Applicant/1st Respondent in any event.**

[2] The application is expressed to be brought under Orders 40 Rules 2 & 3 and 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B & 3A of the Civil Procedure Act and all other enabling provisions of the law. It was premised upon the affidavit sworn on 8th July 2014. The deponent, who is also the Applicant, contended that the removal from office of the Statutory Manager by the Applicant/1st Respondent was unlawful, illegal and of no legal consequence whatsoever. It was further deposed to that the actions by the 1st Respondent were in complete disregard of Court orders issued on 4th July 2014 and that therefore the said Statutory Manager should be reinstated. Further, it was averred that the deponent as a creditor of the 1st Respondent was owed a substantial amount in legal fees, and that the actions by the 1st Respondent greatly prejudice her as a creditor as she not being a policy holder is ineligible for compensation under the Policyholders' Compensation Fund.

[3] The Applicant filed submissions dated 24th February 2015 in support of its application. It was submitted that the 2nd Respondent had since 16th September 2011 been under statutory management, with Eliud Muriithi as the appointed Statutory Manager, whose term in office was extended vide a Court order on 4th July 2014. It was further submitted that the said order was issued pursuant to the provisions of Section 67C(3) of the Insurance Act, and that the actions by the 1st Respondent purporting to terminate the term of the duly appointed Statutory Manager was illegal, unlawful and in contravention of the provisions of the law. In support of the request for committal of the 1st Respondent To civil jail for contempt of Court orders, the Applicant relied on the cases of **Eliud Muturi Mwangi (practicing in the name and style of Muturi & Co Advocates) v LSG Lufthansa Services Europa/Africa GNBH & Another HCCC No 154 of 2014, Republic v Kenya School of Law & Another ex-parte Juliet Wanjiru Njoroge & Others Misc App No 518 of 2014** and **Teachers Service Commission v Kenya National Union of Teachers & Others [2013] eKLR**. In all the afore stated cases, Courts had held that Court orders were serious matters that ought not to be evaded and that the purpose of punishing contemnors was to safeguard the rule of law which was fundamental to the administration of justice.

Application was opposed

[4] The 1st Respondent opposed the application and filed a Replying sworn by him on 14th July 2014. He averred that the application is based misapprehension of both law and fact, and that the same was therefore frivolous, misconceived and an abuse of the process of the Court. It was averred that the claim due from the 1st Respondent had nothing to do with the orders issued by this Court on 4th July 2014, and that in any event, the Applicant had no *locus standi* in this suit.

[5] Further, it was submitted that the orders of 4th July 2014 were by consent of all parties which then can only be set aside on a higher threshold which applies to setting aside a contract. Nothing has been demonstrated which will warrant interference with the said consent. The 1st Respondent also deposed and submitted that the appointment of the Policyholders' Compensation Fund was contemporaneous with the extension of the statutory management of the 2nd Respondent, and was to oversee the envisaged transition from statutory management to revival of the 2nd Respondent, and to preserve its assets during the transition period.

[6] The 1st Respondent filed submission dated 18th March 2015 and emphasized the firm of Wanjiku & Wanjiku Advocates had never been enjoined in the proceedings as interested parties or otherwise in accordance with Order 1 Rule 10 of the Civil Procedure Rules. The firm of Wanjiku & Wanjiku Associates/Advocates is therefore a stranger in these proceedings and cannot purport to prosecute an application of this nature in this matter. All that the firm has done are a nullity. On that basis, the application should be refused. They relied on the case of **HCCC No 599 of 2011 Kwame Kariuki & Another v Mohamed Hassanali Alimohamed Janmohamed &**

Another: (2012) eKLR.

[7] The 1st Respondent made further submissions that he exercised the authority and mandate vested upon him under Section 67(c)(2)(i) of the Insurance Act and appointed the Statutory Manager (hereafter the former statutory manager). The said former Statutory Manager carried out his responsibilities and submitted a report dated 21st January 2014 to the 1st Respondent as by law required. One of his recommendations is that a capital injection of Kshs. 600 million ought to be provided by the shareholders in order to revive the company. He tabled the report to the Board of Directors and it was adopted as revival plan. The 1st Respondent is now pursuing the revival action plans. According to the 1st Respondent, once a report is received from the statutory manager, unless otherwise directed by the 1st Respondent or ordered by the court, the responsibilities of the Statutory Manager ends there and the fate of the company rests entirely with the decision of the Board of Directors of IRA under section 67C (7) & (8) of the Insurance Act. see section 67C (6) of the Insurance Act. But, during the transition and implementation of the report, a Statutory Manager is retained as a caretaker to maintain and preserve the assets of the company until the company is revived or otherwise. The 1st Respondent averred and submitted that by the time the application dated 3rd July 2014 was filed, he had appointed the Policyholders' Compensation Fund (PHCF), which is a statutory body established under Section 179(1) of the Insurance Act. This body came into force on 21st March 2014 and section 179(1) (d) of the Insurance Act as amended permits PHCF to be involved in statutory management process. And there is nothing wrong in appointing PHCF as statutory manager of an insurer. Any person under section 67(C) (2) (1) of Cap 487 includes PHCF. Appointment letters of PHCF were filed too. The extension that was granted upon the application dated 3rd July 2014 was upon the new statutory manager i.e. PHCF. Therefore, the interested party's submission that Mr. Muriithi was in office as at the time of extension of statutory management herein is false. It was submitted that he exercised his discretion conferred upon him by the law not to renew the appointment contract of the former Statutory Manager. And, therefore, he was not in contempt of any Court orders as contemplated by the Applicant. And as long as the Court Orders issued by consent of parties on 4th July 2014 are not set aside, this application should fail. He insisted that the misapprehension of the law and fact above makes the interested party to pursue a lost battle. See the case of **HCCC No 148 of 1999 Gerishom Likechi Kitungulu (substituted with Barbara Aseyo Kitungulu) v Patel Prakhbar Isuer Bhai; (2005) eKLR** on ground for setting aside a consent order.

[8] In the Grounds of Opposition dated 15th July 2015, it was argued that the Applicant had not satisfied the test for grant of an injunction. Also it was urged that the orders issued by the Court on 4th July 2014 extended the period for statutory management and not the term of a particular Statutory Manager. The 1st Respondent argued that a distinction between extension of statutory management and appointment of a statutory manager should be clear, and should not be confused. Whereas the extension of statutory management after 12 months is to be done by the court, the appointment or removal of statutory manager is done by the 1st Respondent. Any contrary view would lead to absurdity especially where a statutory manager does not discharge his functions or becomes rogue or his term is not renewed for any reason. The power of appointing and removing the statutory manager is part of the responsibilities of the 1st Respondent as a way of supervising the functions of statutory manager and ensuring the assets and affairs of the company are preserved. The 1st Respondent took issue with the submission by the interested party that section 67C (2) of the Act creates the Position of manager but does not create the office and that the position starts and ends with the holder. He termed that as an incorrect position of law and an attempt to make a distinction without a difference, because the section gives the 1st Respondent the power to *“appoint a person to assume the management...of the insurer”*. The person so appointed occupies the office created in law. See Black's Law Dictionary which defines office as:-

A position of duty

Therefore, in light thereof, the court cannot grant the orders sought. Based on the above submission the 1st Respondent argued that the term of the ex parte Applicant in JR 269 OF 2014 ended on 4th July 2014. The former statutory manager was informed of the termination in a letter dated 3rd July 2014. Exercise of discretion was proper and so the JR should fail. No orders that were disobeyed and so the Applicant has not proved the allegations of contempt to the high standard of proof. Therefore, the contempt proceedings should fail too.

Submissions by Beth Muigai and Jean Mumbi Ngengi

[9] In the submission filed on behalf of Beth Muigai and Jean Mumbi Ngengi dated 23rd March 2015, it was contended that the appointment of the Policyholders' Compensation Fund as the Statutory Manager was proper and within the purview and mandate of the 1st Respondent, and that the Court should be reluctant to interfere with the 1st Respondent's authority to remove the erstwhile Statutory Manager. It was further submitted that the application has not met the threshold set out for an injunction. See the cases of *KENYA BREWERIES LTD vs. WASHINGTON OKEYO (2002) 1 EA 109*, *LOCABIL INTERNATIONAL FINANCE LTD vs. AGRO EXPORT & ANOTHER (1986) 1 All ER 901*, *MRAO LTD vs. FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS (2003) KLR 125* and the *locus classicus* case of *GIELLA vs. CASSMAN BROWN & CO LTD (1973) EA. 358*. It was submitted that the Applicant had not established a *prima facie* case. Further, it was averred that the law of contempt pursuant to Section 5 of the Judicature Act, and as interpreted in the cases of *CHRISTINE WANGARIGACHEGE vs. ELIZABETH WANJIRU EVANS & 11 OTHERS (2014) ECLR* AND *ALI MOHAMED & 2 OTHERS V KAWIL (1990) ECLR*, the acceptable procedure for seeking committal to civil jail for a contemnor was through an application, and not by way of a notice to show cause.

Affidavit by Eliud Muriithi

[10] Eliud Muriithi, the erstwhile Statutory Manager, filed his Affidavit in response to the application on 15th July 2014. Therein, it was deposed to that subsequent to the extension of his term as the Statutory Manager by the Court on 4th July 2014, the 1st Respondent purported to terminate his appointment as a Statutory Manager, which was in clear violation and blatant contravention of the Court order as issued. He further averred that the actions by the 1st Respondent were in total disregard of the Court orders issued, and further that they were in contempt of the Court and its processes.

Affidavit by Policy Holders' Compensation Fund

[11] The Policy Holders' Compensation Fund filed a Replying Affidavit sworn on 23rd July 2014 by John SifaKeah, the Head of Secretariat of the Policyholders' Compensation Fund. The affidavit was in opposition of the application. It was averred that PHCF is a competent person familiar with the business of insurer within the context of section 67C (2) of the Insurance Act. They averred that the appointment of the Policyholders' Compensation Fund as the Statutory Manager on 3rd July 2014 was contemporaneous with the expiry of the term of the erstwhile manager on 4th July 2014. It was averred that following the consent order recorded by the parties on 4th July 2014, there was no basis for the instant application, and that it therefore lacked merit and should be dismissed. The 2nd Respondent reinforced the above averments in the Replying affidavit, through its submissions dated 12th February 2015. It was submitted that the term of the erstwhile Statutory Manager had expired pursuant to the provisions of Sections 67C (5) & (6) as read together with Section 67(2) (iv) of the Insurance Act. By Section 67C(7) thereof, the 1st Respondent had properly appointed the Policyholders' Compensation Fund as the Statutory Managers. The appointment was made in order to avoid a lacuna in the office of statutory manager, a run by the company's creditors, preserve the assets of and aid the shareholders of the company to implement the revival plan. They stated that there is no intention of liquidating the company as

the action plan for revival is on course. Therefore, the 1st Respondent acted to protect public interest in the insurer. See the case of ***COURT OF APPEAL CIVIL APP NO NAI 4 OF 2008 COMMISSIONER OF INSURANCE & 2 OTHERS vs. KENSILVER EXPRESS LTD & 3 OTHERS*** on the role and mandate of the Statutory Manager. The duty of the Statutory Manager was not to liquidate the company and compensate policy holders as connoted by the Applicant, but to preserve the 2nd Respondent's assets.

DETERMINATION

Locus Standi of the Applicant

[12] The standing of the Applicant in this matter has been questioned. The basis of the challenge is that the firm of Wanjiku & Wanjiku Advocates has not been enjoined in the suit as interested parties, or otherwise as required under Order 1 Rule 10 of the Civil Procedure Rules. And so, they argued that the Applicant's pleadings are a nullity and of no legal effect.

[13] I think the record will offer the answer to the question of the Applicant's standing in these proceedings. The proceedings taken on 16th October 2013 show that the advocates firms of Wanjiku Maina & Co, Otieno Yogo & Co and Kinyanjui Njuguna & Co were enjoined as parties to the suit. The pleadings also show that the Applicant is Naomi Wanjiku Maina t/a Wanjiku Maina & Co Advocates. But I presume there is confusion-if I may call it so- emanating from the fact that the application dated 8th July 2014 is filed and signed by the firm of Wanjiku & Wanjiku Advocates for the Interested Party. I do not think there is any objection which can be taken on that account. The party in the suit is not Wanjiku & Wanjiku Advocates but Naomi Wanjiku Maina t/a Wanjiku Maina & Co Advocates. The firm of Wanjiku & Wanjiku Advocates is the advocate for the Interested Party and it matters not whether the Interested Party is also practicing as or in the firm of Wanjiku & Wanjiku Advocates. There has been no objection that the said firm is not properly on record for the Interested Party. I will, therefore, treat the objection as a technicality which does not affect the rights of the parties. Thus, in the words of the Supreme Court, such technicalities were depreciated by Article 159(2) (d) of the Constitution. I so hold. I will now discuss and determine the substantive arguments in the application.

Major issues

[14] Apart from the issue on locus standi of the Applicant- which I have decided already- I see the following issues for determination:-

a) Was the tenure of Eliud Muriithi as the Statutory Manager terminated in contravention of the law? Or did his term end but not renewed? The Court will not avoid pondering whether the Policy Holders' Compensation Funds is competent to be appointed as Statutory Manager; and if so, whether their appointment was in accordance with the law. Invariably, the order of the court made on 4th July 2014 will come into sharp focus in order to determine whether it was in disobedience of the law, and therefore, contempt of court.

[15] The answers to the above issue may affect the JR NO 629 OF 2014. The said file was given a date different from this case and so was brought to me late, i.e. 23rd June 2015. Judgment thereto shall be delivered on a date that the court shall appoint. Nonetheless, looking at the submissions coming through from counsels, there are two matters which require clarity; the power to appoint a statutory manager and the power to extend the tenure of a duly appointed Statutory Manager. The two are distinct and are exercised by distinct entities. Whereas the former is reposed exclusively in the Commissioner for Insurance, the latter is exclusively vested in the court. On the power to appoint the relevant law is section 67C (2) (i) of the Insurance Act which provides that the Commissioner may, with the approval of the Board –

“...appoint a competent person familiar with the business of the insurer (in this Act referred to as “a manager”) to assume the management, control and conduct of the affairs and business of an insurer to exercise all the powers of the insurer to the exclusion of its Board of Directors, including the use of its corporate seal:

See also what the Court said the case of *GEORGE NGURE KARIUKI vs. CHARLES OSOROMAKONE, THE STATUTORY MANAGER, CONCORD INSSURANCE COMPANY (UNDER STATUTORY MANAGEMENT) [2014] eKLR* that:

“...Statutory management is entirely run by the Commissioner of Insurance as the appointing authority”.

[16] There is yet another dichotomy in opinion on termination of the term of a duly appointed statutory manager. On the one hand, the Applicant submitted that the Commissioner for Insurance cannot terminate the tenure of a Statutory Manager once duly appointed or his term has been extended by the court. On the other hand, the Respondents argued that the Commissioner for Insurance can terminate the tenure of a duly appointed Statutory Manager or whose tenure has been extended by the Court. The Respondents have added a new twist to these arguments when they stated that extension which was given by the court was on the statutory management as a process and not of the tenure of any particular Statutory Manager as claimed by the Applicant and the former Statutory Manager. I should tackle the last argument straight away. The process of statutory management of an insurer starts when the decision to appoint a Statutory Manager is made and goes beyond the tendering of a report by the Statutory Manager under section 67C (6) of the Insurance Act to the time of actual revival or filing of a winding-up petition under section 67C (8) and section 123 of the Companies Act. Although after receipt of the report by the Statutory Manager, the Commissioner shall take into account the said report and make appropriate recommendations to the Board, who shall then take a decision on the matter, I do not think the insurer can follow through on the revival plan without the Commissioner for Insurance and a Statutory Manager. The law envisages the revival plan to be implemented by the Commissioner and the Board through statutory management scheme provided in the Insurance Act. That is why the law provides for extension of the tenure of the Statutory Manager by the Court from time to time and as it may be necessary or justified. It is also important to know critical legal safeguards such as a moratorium which aid the statutory management and preservation of the assets of the company is tied to the tenure of the statutory manager and will cease with the termination of the appointment of the Statutory Manager. Section 67C (10) (c) of the Insurance Act is explicit on this point. Therefore, the office of the Statutory Manager gives effect to the statutory management and no function of the said office will be undertaken by a person other than a Statutory Manager appointed in accordance with the Act. Continuation of the statutory management is tied to a Statutory Manager being in place. Other structures may be put in place by the Commissioner with the approval of the board to follow through the revival together with the statutory manager. The fine distinction drawn upon these two terms “statutory management” and “office of Statutory Manager” should be seen within the legal and practical frame work discussed above. Hence, I do not think it is tenable or possible in law to make an application under section 67C (3) of the Insurance Act for extension of the statutory management without a duly appointed Statutory Manager in place. An application so made will be based on nothing and will be refused by the Court with a lot of deprecation. I am glad, however, that although the application herein was made for extension of statutory management, it nonetheless stated that a new Statutory Manager had been appointed. This may be a clever craft but it does not make any legal sense as the particular person appointed is the one whose term will be extended. Therefore, is this a case of removal by the Commissioner or expiry of term of the Statutory Manager?

Case of expiry of tenure or removal

[17] In the prayers, the application dated 3rd July 2014 sought extension of statutory management of Blueshield Insurance Company. But in the grounds stated in the said application as well as the annexures it is revealed that the Commissioner for Insurance had appointed a new

statutory manager to oversee the revival process. See ground (c) vi and annexure SMM 3(b) of the affidavit of the 1st Respondent in support of the application dated 3rd July 2014. It also seems that the 1st Respondent had already signified to the former Statutory Manager in the letter dated 3rd July 2014 that his term as Statutory Manager was coming to an end on 4th July 2014 and that the Commissioner will not be renewing it. He asked the former manager to prepare a handover report as at 4th July 2014 and hand it over to the 1st Respondent's office. See also annexure SMM 3(A). The said application came before Havelock J on 4th July 2014 and was granted *more or less by consent of the parties*. The record shows that Mr. Kimathi appeared for the Statutory Manager. It is not clear which statutory manager Mr. Kimathi appeared for. Nonetheless, that is the application which was granted and the Statutory Manager appointed by the Commissioner for the purpose of the extension given was Policy Holder' Compensation Fund. Somehow, it seems that the former statutory manager and his counsel were under the impression that the extension given was in respect of the former statutory manager's tenure. When a notice was published in the papers that the former manager's tenure has been terminated, the present application was filed and interim orders were granted.

[18] Havelock J expressed utter dismay at the turn of events; that the Commissioner confirmed extension of the tenure for the former manager and on the same day terminated it. But although it is not clear why matters took the turn they did, the record should be the guide. And I do not want to read too much from the events in this matter or make any adverse inference on any party. In the circumstances of the case, I only need to decide; a) whether the Commissioner for Insurance has power to terminate appointment of Statutory Manager once appointed or whose tenure has been extended; b) whether he is under an obligation to renew the term of a statutory manager; and c) whether he can appoint another manager on expiry of the term of the previous one.

Power to terminate appointment

[19] Contrary to the arguments by the Applicant, the Commissioner of Insurance with the approval of the Board has power to remove a duly appointed Statutory Manager. This power is inherent within the authority of the Commissioner for Insurance in running the entire statutory management of the insurer. It also exists to ensure the Statutory Manager discharges their duties in accordance with the law for the sake of the insurer, the policy holders, creditors and the general insuring public. Any contrary view will be absurd as it would create rogue Statutory Managers without accountability. See what the Court stated in *GEORGE NGURE KARIUKI case (supra)* that:

“...Statutory management is entirely run by the Commissioner of Insurance as the appointing authority”.

Section 67C (2) and (6) of the Insurance Act are also explicit on this point of removal of officer of company. But, it is expected that such removal shall be based on reason provided in law such as contravention of any provision or regulation of the Act, or dissipation of assets or deterioration in the affairs of the Company, or has been guilty of conduct detrimental to the policyholders or other creditors or has not *“discharged his duties with diligence and in accordance with sound insurance, actuarial and financial principles and, in particular, with due regard to the interests of the insurer, its policy-holders and the insuring public in general”* as required by section 67C (4) of the Insurance Act. On the last requirement, see section 67C (6) of the Act. Before I can apply these thresholds on this case, let me determine whether this is a case of removal or expiry of term of the Statutory Manager.

[20] Havelock J observed that, it seems extraordinary that the Commissioner for Insurance could extend the tenure of the former Manager and then terminate it on the same day. There is, however, a dark crowd over the entire matter. As I have already stated, I have perused the application dated 3rd July 2014 and it revealed two important aspects of this case. The first one; that the Commissioner had appointed a new Statutory Manager, namely, Policy Holders'

Compensation Fund on which extension of the statutory management was sought. The second; that the Commissioner for Insurance had decided not to extend the tenure of the former Statutory Manager. Nobody has claimed that the application I am reading from and dated 3rd July 2014 or any of the annexures thereto were not the one which was placed before Havelock J on 4th July 2014. How did Kimathi consent to the application dated 4th July 2014 without perusing the entire application? Going by the application dated 3rd July 2014 and the annexures thereto, there are two marked events. The first one is that the term of the former Statutory Manager expired on 3rd or 4th of July 2014. The Commissioner for Insurance declined to renew the expired term. The second, there was a new appointment made by the Commissioner for Insurance of another person other than the former Statutory Manager. The new appointment took effect after the expiry of tenure of the former Statutory Manager. The Commissioner for Insurance could appoint another statutory manager upon expiry of the term of the earlier one. There is no command in law that he must re-appoint a manager whose term has come to an end or a prohibition that he cannot appoint a new manager where there was another former manager. Except, however, as the Commissioner for Insurance exercises statutory power conferred on him by law; he must exercise his appointing authority in the best interest of the insurer, the policy holders, creditors and general insuring public. This is more onerous in this era of justification of exercise of public power. However, although the Commissioner for Insurance commended the former statutory manager for his splendid work, there is no evidence of bad faith or breach of law or procedure in not renewing his tenure. The report filed in court show that major progress has been made and substantial ground towards revival of the insurer has been covered. Above the foregoing, I also find that this is a case of expiry of term rather than removal of statutory manager. On that basis, I am not able to find any improper or illegal exercise of statutory authority by the Commissioner for Insurance. But one more question lingers. Is Policy Holders' Compensation Fund a competent person to be appointed a statutory manager?

Competence of Policy Holders' Compensation Fund as Manager

[20] Under Section 67C (2) of the Insurance Act:-

- (2) The Commissioner may, with the approval of the Board—**
- (i) appoint a competent person familiar with the business of the insurer (in this Act referred to as “a manager”) to assume the management, control and conduct of the affairs and business of an insurer to exercise all the powers of the insurer to the exclusion of its Board of Directors,**

The important word is ‘person’. According to the interpretation part of the Act:-

“...person” includes a company, corporate body (whether incorporated by or under statute or statutory authority), association, association of underwriters, fund, natural person, partnership and scheme; [Underlining and emphasis mine]

The Policy Holders Compensation Fund is established pursuant to section 179 of the Insurance Act. The Fund consists in the Board which is a body corporate with perpetual succession and a common seal which shall sue or be sued or act in its corporate name. Some of the functions of the Board which are relevant to statutory management of an insurer include:

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- (d) participate in the statutory management of an insurer placed under statutory management by the regulator;**
- (e) liquidate an insurer as may be ordered by a court;**

From the functions of the Fund, it is familiar with the business of the insurer. And from the law, the way I understand it is that the Fund is competent to be appointed a statutory manager of an insurer. It can even liquidate an insurer upon an order of the court on a winding up proceedings commenced under section 67(C) (8) and 123 of the Insurance Act and the Companies Act respectively.

Findings and orders

[21] Accordingly I make the following findings and orders:-

- a) **That the application dated 3rd July 2014 sought extension of statutory management of the insurer herein with the Policy Holders Compensation Fund as the new statutory manager. The said application did not relate to the appointment or extension of the term of Eliud Muriithi as a statutory manager.**
- b) **That the Commissioner for Insurance did not terminate the tenure of Eliud Muriithi as Statutory Manager of Blueshield Insurance Company (under statutory management).**
- c) **The Commissioner for Insurance did not act contrary to court orders of 4th July 2014 in appointing a new statutory manager, Policy Holders Compensation Fund. Accordingly, he is not in contempt of court.**
- d) **That the Policy Holders Compensation Fund was properly appointed as manager.**
- e) **The application dated 8th July 2014 is dismissed with costs. it is so ordered.**

Dated, signed and delivered in court at Nairobi this 25th day of June 2015.

F. GIKONYO

JUDGE