



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. MISC. APPL. NO. E082 OF 2021

BERNARD KAMAU MBUGUA.....APPLICANT

=VERSUS=

REANDANI NJOROGE WA NDAANI

FRANCIS MWANGI KARIUKI

DANIEL MUTHII KARIMI (BEING TRUSTEES

OF RUIRU RIVER NEIGHBOURHOOD

SOCIETY LIMITED.....1ST RESPONDENT

OFFICIAL LIQUIDATOR – NGUNDU FARMERS

COOPERATIVE SOCIETY LIMITED.....2ND RESPONDENT

THE CHIEF LAND REGISTRAR, NAIROBI.....3RD RESPONDENT

RULING

1. Through an *ex parte* notice of motion dated 27/4/2021, the applicant, Bernard Kamau Mbugua, seeks leave of this court to commence legal proceedings against the Official Liquidator of **Ngundu Farmers Co-operative Society Limited**. The application was expressed as brought under **Section 432(2)** of the **Insolvency Act** and **Sections 1A, 1B, 3 and 3A** of the **Civil Procedure Act**.

2. Arguing the application in the virtual court on 6/5/2021, Mr Edward Gacau Kariuki, counsel for the applicant, submitted that the Environment and Land Court had jurisdiction to entertain the application. Counsel cited **Section 2** of the **Insolvency Act** and submitted that, in relation to a matter other than one that is specifically entrusted to the High Court by the provisions of the Act, the court exercising or having responsibility for exercising jurisdiction in respect of that matter had jurisdiction to grant leave. Counsel contended that the court “exercising jurisdiction” in the intended suit was the Environment and Land Court because the material dispute related to title to land. Counsel further cited **Section 4** of the **Environment and Land Court Act** and asserted that the Environment and Land Court was a superior court of record with the status of the High Court. He urged the court to grant leave as prayed.

3. I have considered the *ex parte* application. I have also considered the relevant legal framework and jurisprudence. Two questions fall for determination in the application. The first question is whether this court has jurisdiction to grant leave under **Section 432(2)** of the **Insolvency Act, 2015**. If the answer to the first question is in the affirmative, the second question would be, whether the applicant has satisfied the criteria for grant of leave under **Section 432(2)** of the **Insolvency Act, 2015**. I will analyse them briefly and sequentially in the above order.

4. Among the key objects of the Insolvency Act was to amend and consolidate the law relating to the insolvency of natural persons and incorporated and unincorporated bodies to, *inter alia*, provide for their liquidation. To this extent, Part VI of the Act contains an elaborate framework on liquidation of companies.

5. There is no dispute that under **Section 432(2)** of the **Act**, when a liquidation order has been made or a provisional liquidator has been appointed in relation to a company, legal proceedings against the company may be begun or continued only with the approval of the court and subject to such conditions as the court considers appropriate.

6. Is the Environment and Land Court the court contemplated to grant leave or approval under **Section 432(2)** of the **Act**? **Section 2** of the **Act** defines the court contemplated under the Act as follows:

the “court” means the High Court and if there is an insolvency division of that court, means that division.

7. My understanding of the “**court**” contemplated under **Section 432(2)** is that, it is the court seized of the liquidation proceedings under the **Insolvency Act, 2015**. Put differently, it is the court issuing a liquidation order or appointing a provisional liquidator under the **Insolvency Act, 2015**. Secondly, that court is defined by **Section 2** of the **Act** as the High Court or, whenever established in any High Court Station, the Insolvency Division of the High Court at the particular High Court Station.

8. Liquidation of a company entails consolidation of the assets and liabilities of the company. Secondly, liquidation entails disposal of assets of the company and settlement of liabilities of the company. Once liquidation is concluded, the company ceases to exist. In my view, these are some of the considerations which Parliament had when it enacted the law requiring leave of a particular court prior to initiating court proceedings against a company in liquidation. Were every court across the country to have jurisdiction to grant leave, the process of orderly consolidation of assets and orderly settlement of liabilities of companies, and indeed, the entire process of orderly liquidation of companies, would be compromised. Indeed, there would be the possibility of leave being granted in relation to companies whose liquidation processes have already been finalized and are completely wound up.

9. In light of the foregoing, it is my finding that this court is not the court contemplated to grant leave under **Section 432(2)** of the **Insolvency Act, 2015**. It is my further finding that the court contemplated to grant leave under **Section 432 (2) of the Act** is the court exercising liquidation jurisdiction under the **Insolvency Act**. That court is the High Court.

10. Having made the above finding, the second question in this ruling becomes moot.

11. Consequently, the applicant’s notice of motion dated 27/4/2021 is declined for lack of jurisdiction on part of this court. This being an *ex parte* application, there will be no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 24TH DAY OF MAY 2021.

B M EBOSO

JUDGE

In the Presence of: -

Mr Kariuki for the Applicant

Court Assistant: June Nafula