



**Kulecho v Receiver Manager, Resolution Insurance Limited (Miscellaneous Civil Application E127 of 2024) [2025] KEHC 2496 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2496 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CIVIL APPLICATION E127 OF 2024  
AC BETT, J  
FEBRUARY 13, 2025**

**BETWEEN**

**JOSEPH KULECHO ..... APPLICANT**

**AND**

**RECEIVER MANAGER, RESOLUTION INSURANCE  
LIMITED ..... RESPONDENT**

**RULING**

1. The Applicant herein filed a Notice of Motion dated 15<sup>th</sup> August 2024, brought under section 16, 17 and 56 (2) of The *Kenya Deposit Insurance Act* where she sought for the following orders:-
  - a. Spent
  - b. Spent
  - c. That the applicant be granted leave to commence proceedings against the statutory manager of resolution Insurance Co. Ltd extension against resolution insurance co. Ltd in receivership.
  - d. That the costs of this suit be in the cause.
2. The application is premised on the grounds set out on its face and on the supporting affidavit sworn on 15<sup>th</sup> August 2024 by the applicant.
3. The Applicant stated that he was the registered owner of the Motor vehicle KCD 261 N for which he had been sued in a road traffic accident in Butali PMCC No. 104, 105 and 106 of 2020 and a decree issued in favor of the plaintiffs.
4. He confirms that he took a cover in compliance with section 4 (1) *CAP 405* with the Respondent which is now under statutory management and since there are three decrees that were extracted against



him and he now seeks leave of the court to continue any proceedings against the Respondent which is under liquidation.

5. The Respondent filed their replying affidavit dated 25<sup>th</sup> September 2024. They admitted that company was currently under liquidation pursuant to a court order dated 21<sup>st</sup> December 2023 by Honourable Justice Mabeya.
6. They confirm that the Applicant had lodged a debt claim with the Respondent which is under an interim liquidator who was in the process of verifying its authenticity and would compensate its creditors in due time.
7. The Respondent contends that the application is defective and incurable since it was bought under the wrong provisions of the law being section 56(2), 10 (1), 16 and 17 of the [Kenya Deposit Insurance Act](#) which protects depositors interest in the Banking sector and not in the Insurance sector.
8. They finally pray that the court dismisses the application and allow the interim liquidator time to execute its mandate for the benefit of the other creditors.
9. None of the parties filed submissions.
10. From the arguments presented by parties and the pleadings, the main issue for determination is whether this court should grant leave for the Applicant to institute a separate suit against the Respondent.
11. Section 56 of the [Kenya Deposit Insurance Act](#), 2012 states as follows:-
  - “(1) No cause of action which subsisted against the Stay of directors, management or the institution prior to liquidation shall be maintained against the liquidator.
  - (2) No injunction may be brought or any other action or civil proceeding may be commenced or continued against the institution or in respect of its assets without the sanction of the court.”
12. The Applicant herein is seeking leave to commence proceedings against the Respondent his insurer who he claims is currently under receivership.
13. The Respondent on the other hand claims that they are still in the process of assessing their assets and consolidating their creditors and will compensate the Applicant once they confirm the authenticity of his claim alongside the rest of the company’s creditors.
14. Contrary to the Applicant’s averments, the Respondent is currently under an interim liquidator and is therefore no longer under receiver management.
15. To my understanding, a receiver manager is appointed to manage a company’s assets when it falls into financial distress while an official liquidator is appointed to oversee the dissolution of the company by taking control of all the assets of the company, identifying the creditors, and settling their claims in prioritized order before ultimately winding up the operations of the company.
16. In my view, if the Company were still under receiver management, the Applicant should have filed this application under Section 560 1 (d) of the [Insolvency Act](#) states:-
  - “ 1. While a company is under administration—



- (d) a person may begin or continue legal proceedings (including execution and distress) against the company or the company's property only with the consent of the administrator or with the approval of the Court.”

17. Since the Respondent Company is now under liquidation, it is my considered view that the Applicant ought to have enjoined the interim liquidator as duly appointed by the Insolvency Court in HC COMMPI E077 of 2023 vide its order dated 21<sup>st</sup> December 2023.
18. By Gazette Notice No. 569 dated 16<sup>th</sup> January 2023 and newspaper advertisement dated 16<sup>th</sup> January 2024, the bond interim liquidator Mr. Longet Terer invited creditors to send full particulars of their claims against the company to the interim liquidator and therefore the Applicant is deemed, by operation of the law, to be fully aware of the current status of the company.
19. The Respondent has deponed that the Applicant’s application is brought under the wrong provisions of the law and I am in agreement with them. The [Kenya Deposit Insurance Act](#) ordinarily protects the interests of depositors within the banking sector.
20. The Applicant should have relied on the [Insolvency Act](#) which provides in Section 432 (2) that:-  
“When a liquidation order has been made or a provisional liquidator has been appointed, 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.”
21. In its response to the application, the Respondent through its legal officer does not dispute the debt and avers that the Applicant has filed proof of the debt and the same is currently being verified administratively for purposes of settlement alongside the other creditors. This averment was not controverted by the Applicant who attached copies in proof of his having lodged his claim. The claim form is dated 12<sup>th</sup> August 2024.
22. The rationale behind Section 432 of the [Insolvency Act](#) is that once a Liquidation order is made, the same should be executed in favour of all the creditors of the company in order of priority. The order of priority is set out in Schedule Two of the [Insolvency Act](#).
23. In my view, the Applicant is jumping the gun. Having lodged his claim, he ought to be patient and allow the interim liquidator time to discharge his duties as prescribed by the [Insolvency Act](#).
24. Be that as it may, for the reasons that the Applicant has come under the wrong statutory provisions, I find that the application is incompetent and hence devoid of merit and it is hereby dismissed. Due to the circumstances of the case, there shall be no order as to costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

No appearance for Applicant

No appearance for Respondent

Court Assistant: Polycap

