



**Multiple Hauliers EA Limited v NCBA Kenya PLC (Insolvency Cause E022 of 2021)  
[2025] KEHC 1524 (KLR) (Commercial and Tax) (17 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1524 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**INSOLVENCY CAUSE E022 OF 2021**  
**A MABEYA, J**  
**FEBRUARY 17, 2025**  
**IN THE MATTER OF MULTIPLE HAULIERS (E.A) LIMITED (UNDER ADMINISTRATION)**  
**AND**  
**IN THE MATTER OF SECTIONS 534, 537 AND**  
**538 OF THE INSOLVENCY ACT NO. 18 OF 2015**  
**AND**  
**IN THE MATTER OF REGULATION 102 OF THE INSOLVENCY REGULATIONS 2018**  
**BETWEEN**  
**MULTIPLE HAULIERS EA LIMITED ..... APPLICANT**  
**AND**  
**NCBA KENYA PLC ..... CREDITOR**

**RULING**

1. This is a ruling on five applications. They are dated 24/07/2024, 26/09/2024, 26/09/2024, 10/12/2024 and 11/12/2024, respectively.

**Motion Dated 24/07/2024**

2. This was by Prime Bank Limited. It was brought under Section 560(i) (d) of the *Insolvency Act* (“the Act”). It sought leave for the bank to proceed and continue with Milimani Comm. No. E183 of 2021 Multiple Hauliers (EA) Limited vs. Prime Bank Limited & Standard Bank of South Africa.



3. The grounds were that under the Act, leave was necessary to continue with those proceedings. That an injunction had been issued in those proceedings and a challenge to the same was dismissed due to the pendency of these insolvency proceedings. Mr. George Wachira Mathui swore an affidavit in support thereof and reiterated the aforesaid grounds.
4. The Motion was opposed by, inter alia, Mr. Rajinder Singh Baryan, a Director of the Company and Kenya Commercial Bank Limited. In his replying affidavit sworn on 18/12/2024, Mr. Oscar Ombuna for KCB stated that the application was designed to facilitate the sale of LR No. Mn/1/214 Section 1 (“Mombasa Property”) outside the administration. That such eventuality would prejudice KCB which holds priority rights over the same.
5. He urged the Court to consider the purpose of administration, the legitimate interests of all the Creditors and the loss the applicant is likely to suffer. That KCB had a debenture over the company for US\$ 27,709,134/62 that the said floating charge had since crystallized and it had a priority over the subsequent charges. That KCB had not consented to the creation of Prime Bank’s Charge.
6. In his affidavit of 14/08/2024, Mr. Rajinder Singh stated that the amount of Kshs. 178,000,000/= and US\$ 2.5 million for which the property had been given as security had been fully settled and title therefor released to Kaplan & Stratton, Advocates for Standard Chartered Bank of South Africa. That it is for that reason that an injunction had been issued in that suit.
7. Mr. Mark Gakuru, the Official Receiver also opposed the motion vide his affidavit of 8/1/2025.
8. I have considered the rival averments and the submissions on record and the authorities relied on. This is an application for leave to proceed with a suit. The subject suit HCOM No. E183 of 2021 was provoked by Prime Bank attempting to exercise its statutory power of sale.
9. There are several things that remain undisputed. First, the company is under administration. Secondly, that other suit is pending and what is at stake is the Mombasa Property. Thirdly, KCB has a prior security i.e. a debenture created in 2011 which has priority over all the other subsequent securities including the one by Prime Bank through a fixed charge.
10. The foregoing being the case, the Court has to consider the purpose of the Statutory Moratorium declared under Section 560 of the Act and the objectives of administration under Section 522 of the Act. Further, the Court must consider the prejudice to be suffered by the applicant vis a vis the entire body of creditors. See Owiti, Otieno & Ragot Advocates –vs- Mumias Sugar Company Ltd [2020] eKLR.
11. My take is that, since there are competing interests over the Mombasa Property by both Prime Bank and KCB, which holds a security that runs in priority, it would be highly prejudicial to grant the leave sought. It was contended and not denied that, if the suit was allowed to proceed, in jeopardy would be the Mombasa Property over which KCB claims.
12. Further, since the company is under administration all executions and proceedings that may negatively impact its assets have been suspended. To allow the leave sought would be discriminating in favour of Prime Bank against the rest of the body of creditors. Further, with the debenture of KCB having crystallized, it would be extremely prejudicial to KCB if the leave were to be granted. See: Menengai Rolling Mills Ltd & Another –vs- Blue Nile Wire Product Ltd & Another [2019] e KLR.
13. In the premises, I find the Motion dated 24/07/2024 to be without merit and I dismiss the same.



### **Motion dated 26/09/2024 by Ndegwa, Sitonik & Karina**

14. The Motion was brought inter alia, under Order 45(1)(b) and Section 56 (1) (b) and 522 of the Insolvency Act. It sought to stay the decree issued on 29<sup>th</sup> February, 2024 in Mombasa CA No. E095 (sic).
15. The grounds thereof were that the company has been under administration and a judgment was entered against it on 29/2/2024 as aforesaid. That a ruling had been delivered on 13/9/2024 granting the company protection yet on 26/4/2024 Betico Auctioneers issued a Notice of Sale of the Companies Motor vehicles.
16. Section 560(1) of the Act provides:-
  - “(a) a person may take steps to enforce a security over the company’s property only with the consent of the administrator or with the approval of the court.” (Emphasis supplied).
17. The foregoing provision is a Statutory Moratorium that can only be sidestepped in terms of Section 160(1) (d) of the Act. Since there was no leave to continue with the enforcement of the subject decree, any further execution thereof will be unlawful.
18. Accordingly, the application dated 26/09/2024, filed by Ndegwa, Sitonik and Karina Advocates is allowed in terms of prayer No. 2 thereof.

### **Motion Dated 26/09/2024 by Olendo Orare & Samba Advocates.**

19. This was brought under the Provisions of sections 560, 692 and 698 of the Act. It sought to restrain KCB, Cooperative Bank and all other banks and debenture holders from auctioning the property of the company pending the official Receiver’s submissions of his report on the proposed investment.
20. In particular, the company sought the restraining order against the sale of subdivision No. 4803/VI/ Mainland North, subdivision No. 4181/VI/MN/ LR No. 9042/608, Nairobi (“the said properties”)
21. The grounds were that in the negotiations that had been going on, the Term Sheet provided that the said properties were part of the properties to be sold to the investor. That KCB had issued a Statutory Notice on 10/9/2024 before the ruling of 13/9/2024 which appointed the Official Receiver as Administrator of the Company. That if the sale took place the entire transaction would collapse.
22. The Motion was opposed vide Grounds of Opposition dated 14/10/2024 by KCB and Cooperative Bank. It was contended that the current proceedings did not touch on Multiple ICD (Kenya) Limited which owns two of said properties situated in Nairobi. That as secured creditors, the two were entitled to exercise their Statutory power of Sale as the Charges over the said properties had not been challenged.
23. That there will be no prejudice to be suffered by the other creditors and a permanent injunction cannot issue at an interlocutory stage. That the orders of 13/9/2024 that stopped all actions against the company do not apply to the process that KCB had commenced on 5/9/2024.
24. The Court has considered the rival contestations. It is not in dispute that the two banks and others who are secured have their right to exercise their Statutory Power of Sale intact. It is also not in dispute that the debt of the company runs into tens of billions of shillings. That there are both secured and unsecured creditors who have lined up themselves waiting to get whatever that can be achieved from the pending transaction or liquidation of the company, which ever will prevail.



25. The Court is alive to the contention that two of the said properties belong to Multiple ICD (Kenya) Limited which is a separate and distinct entity from the company. However, it was sworn that notwithstanding that the said two properties of Multiple ICD(K) Limited, they were part and parcel of the Term Sheet that was meant to turn around the company. That they were part of the properties that are to be sold to the investor. This fact was not denied.
26. As observed in the ruling of 13/9/2024, this Court (Majanja, J and Okwany, J) had in 2021/2022 given orders that had sought to preserve the company in terms of the objectives set out in Section 522 of the Act. Subsequently, all the Senior Lenders entered into negotiations with the company for the rescue of the latter. Those negotiations took rather long time that led to the two original administrators to hastily resign on 28/3/2024. Subsequently, all the Lenders who had been supportive of the rescue plan bolted on the ground that the so called investor was not disclosed.
27. In the ruling of 13/9/2024, the Court noted that since the investor had been disclosed, Amava Consolium, and a Term Sheet signed, it was still possible to see if the objectives set out in Section 522 of the Act could be achieved. The Court then appointed the Official Receiver as the Administrator to guide the process of having the investor inject the required money to the Company in order to pay and distribute the same to the creditors.
28. In view thereof, I hold that although the process of realization of the properties began on 5/9/2024 before the ruling of 13/9/2024 was made, that ruling also covered that process.
29. Further, since both KCB and Cooperative were all along involved in those negotiations that sought to realize the objectives aforesaid until May, 2024, they very well knew that the said properties were part of “the package” that was being sold to the investor. By attempting to remove the said properties, though belonging to a separate entity Multiple ICD Ltd, that had agreed to the terms of the Term Sheet, the banks intention is to scuttle the entire transaction and nothing else. It is not in good faith. The transaction was a package and not severable. It was not shown that the said properties were not part of the Term Sheet for which transaction the Official Receiver was to oversee.
30. The view the Court takes is that the injunction sought is or can only to run until the term given to the Official Receiver expires and not permanent as sought in the Motion.
31. In the circumstances, I grant the prayer only to run for the term the Official Receiver is to actualize the transaction sanctioned by the Court on 13/9/2024.

#### **Motion Dated 10/12/2024**

32. This was filed by the Firm of Olendo, Orare & Samba Advocates for the Company. It was brought under Regulation 10 of the Insolvency Regulations, 2016 amongst other provisions of the law. It sought the extension of the time for the transaction to 20/5/2025. It also sought the revocation of the Administrators for failure to comply with the Provisions of Section 55(i) of the Act.
33. Since the prayer for extension mirrors the one sought by the Official Receiver in the Motion of 11/12/2024, I will consider them both.

#### **Motion of 11/12/2024**

34. This was brought by the Official Receiver pursuant to Sections 593 and 594 of the Act and the 4<sup>th</sup> Schedule of the Act. It sought the extension of the Administration for a further twelve (12) months and that all actions against the company be stayed.



35. The grounds were set out in the body of the Motion and the affidavit of Mark Gakuru sworn on 11/12/2024. These were that the Official Receiver (“OR”) had been appointed strictly to oversee the execution of the Term Sheet between the company and a potential investor with the completion being December, 2024.
36. That upon appointment, he discovered that the Term Sheet dated 29/5/2024 had expired which led to execution of an addendum between 25<sup>th</sup> and 26/11/2024 which would run to 2025. That for the purposes of administration to be achieved, the OR needed to conduct the same with full powers as per Division 9 of the 4<sup>th</sup> Schedule to the Act. That will enable him properly deal with the proposals in place and the Creditors.
37. That the extension of the administration will help him negotiate with the creditors and deal with unanticipated issues. He also set out all that he had undertaken since taking office on 23/10/2024. That the company had since initiated renewal of the guarantee that was to extend until 17/7/2025. He therefore sought the extension of Administration with full powers under Division 9 and 5<sup>th</sup> schedule of the Act for the next twelve (12) months.
38. The Motion was opposed by KCB, Cooperative Bank, Prime Bank, I & M Bank and NCBA, respectively.
39. It was contended in the Grounds of Opposition dated 5/1/2025 by KCB and Cooperative Bank that; the Term Sheet of 29/5/2024 was not binding on the company or AMAVA, that no explanation had been given why the OR had not complied with the order of 13/9/2024. That the company was hiding behind sourcing for an investor to hinder the enforcement of the creditors’ rights. That any extension will prejudice the banks. That the US\$8.5M guarantee by the investor is speculative unenforceable and inadequate to cover the total purchase price of the company. That the addendum was until May, 2025 and not the twelve months being sought by the OR. The two banks were owed in excess of US \$ 55,204,457 and Kshs. 1.7B as at 31/5/2023.
40. George W. Mathui swore an affidavit for Prime Bank on 13/1/2025 in opposition. He referred to the pending Motion of 24/7/2024 which has been determined herein. He referred the Court to the Cases of E. A Cables PLC vs Ecobank Kenya Ltd; SBM(K) Ltd [2020] Eklr and Landmark Port Conveyors Ltd vs Buzeki Enterprises Ltd & Anor [2019] Eklr in support of the contention that, as a secured Lender with a fixed charge, Prime Bank should not be hindered in its quest to realize its security. That to the extent that the application sought to stay all pending proceedings, the same should be denied.
41. Peris Wairimu Chege swore an affidavit on 21/1/2025 on behalf of I&M Bank. She stated that the application was an abuse of the Court process. She gave a history on how since 27/1/2023 the matter had dragged on without the company reaching any settlement with the creditors.
42. That there was no evidence of any action having been taken on the Term Sheet dated 29/5/2024. That the Bank would suffer irreparable loss as it had sought leave to repossess and sell all the charged assets. That as at 1/10/2024, I & M Bank was owed Kshs. 627,944,643/19. That its assets were depreciating and the debt may outstrip its value.
43. Stephen Atenya swore an affidavit on 14/1/2025 on behalf of NCBA. He stated that the term of the OR had ended. That the proposed investment is a ruse that has been used by the Company to continue delaying the completion of the Administration of the Company. He also set out the litany of the extensions sought by the Company to negotiate from 7/10/2021 to 4/6/2024. That in his experience in corporate banking, Term Sheets are not cast in stone. They may be rescinded, amended and or



terminated by any of the parties at any time. That there was no guarantee that the renewed negotiations will yield any positive results.

44. That NCBA was being prejudiced since it was owed approximately Kshs. 7,255,411,886.90 as at 7/6/2021. That the Company had consistently failed to secure any firm commitment from an investor or sell any or all of its assets. That the appointment of the OR was a nullity. That its administrators resigned on 28/3/2024. That the OR had failed to complete the oversight he was appointed to undertake. That it should not take 12 months as sought but 6 months from the date of the application. That the OR had not filed an application to set aside the ruling of 13/9/2024 to be appointed as full administrator. That in view thereof, the Motion should be dismissed.
45. I have considered the opposing contestations, the submissions on record and the authorities relied on. The submissions were dated 4/2/2025, 12/2/2025, 10/2/2025, 10/2/2025 and 6/2/2025 which I have carefully considered.
46. In CA (Application) E 415 of 2023 - Cape Holdings Ltd vs Synergy Industrial Credit Ltd [2024] Eklr, the Court of Appeal held that it had no jurisdiction to extend or re-appoint an administrator whose term has expired. NCBA urged that on the basis thereof, the extension sought should not be granted.
47. It should be noted that the pronouncement by the Court of Appeal was in line with the provisions of Section 594(2)(b) of the Act. As at the time the parties were before that Court, the term of the administrator of twelve months had expired. In the present case, the term given to the OR was about 4 months. It was extended after that expiry and therefore, that holding does not apply in the present case.
48. In Cape Holdings Ltd vs Synergy Industrial Credit & Others [2023] KEHC 18685 (KLR), the Court held: -

“The power to extend administration is in the discretion of the Court. However, like all other discretions, the same must be exercised judiciously. The Court will examine the purpose for which the extension is sought. The extension should be for the furtherance of the objectives of administration. That the administrator must be able to show the Court what he/she has done for the period of administration to justify the extension sought. What must have been done should be in tandem with the objectives of administration.

Further, where it is shown that the administrator has not acted towards achieving the objectives of administration, extension would be refused. Where it is also shown that the actions of the administrator are prejudicial to the body of creditors, no extension will be given. Further, where it is shown that nothing substantial has been achieved during the period of administration eg. by way of calling the first creditor’s meeting, creating the creditor’s committee, calling and identifying the total debt portfolio of the Company identifying and collecting the assets of the company and making a proposal on how to turn around the company under distress, no extension would issue.”

49. In the case cited by the Learned Counsels for KCB and Cooperative Bank of Re Nortel Networks UK Ltd [2017] E WHC 3299(ch), the Court held that:-

“The Court’s discretion under paragraph 76 (2) (a) is not circumscribed in any express way, but it is readily apparent that it should be exercised in the interests of the creditors of the company as a whole, and that the Court should have regard to all the circumstances, including (i) whether the purpose of the administration remains reasonably likely to be



achieved, (ii) whether any prejudice would be caused to creditors by the extension, and (iii) any views expressed by the creditors.”

50. In both the cases of Cape Holdings Ltd vs Synergy Industrial Credit Ltd (supra) and Cytonn High Yields Solutions LLP – Insolvency Petition No. E063 of 2021 [2023], the Court declined to extend the administration when it found that the interests of the creditors had not been taken care of and that not much had been achieved by the administration towards achieving the objectives set out under section 522 of the Act.
51. I would like to set out certain issues pertinent in this matter. After the initial administrators were appointed in 2021, Majanja J and later Okwany J, restrained the administrators from proceeding with the administration order to give the Company a chance to negotiate with the creditors. Those negotiations went on until May, 2024 when they broke down and after the two administrators had resigned on 28/3/2024.
52. It is not disputed that until May, 2024, while some unsecured creditors led by Synergy Credit were seriously opposed to the continued extensions of stay, all the Senior Lenders who are owed billions were in support thereof. None of the parties disclosed to the Court the nature of the negotiations until after those negotiations broke down.
53. From what has been disclosed in the affidavits filed in opposition to the Motion, the Senior Lenders are owed in excess of US\$56M and Kshs. 9B, respectively. That is not a light debt. The debt continues to escalate as time passes on and the earlier the matter is brought to a close the better. It is not clear what the asset base of the Company is. It is clear that any delay in settling the matter one way or the other might lead to untold losses on the part of the creditors. This is what was being avoided by those protracted negotiations of about 3 years.
54. It should be noted that between March, 2024 until September, 2024 the Company was not under administration. Neither NCBA nor any of the other creditors appointed one. The OR was appointed in September, 2024 by the Court to fill the void left by the two administrators who resigned on 28/3/2024 so as to protect the Company from dismemberment and haphazard realization of its assets.
55. In his appointment, the OR was given strict directions on what he was to oversee. It seems that he did not find much as most of the timelines set by the Time Sheet of 29/5/2024 had lapsed. It was alleged that due to the ongoing litigation, the potential investor was not clear as to what would happen to the Company until after the order of 13/9/2024 was made.
56. From the Report of the OR dated 13/11/2024, it is clear that the total debts are in excess of Kshs. 31.4b while the total assets of the company are Kshs. 17b. He gives a caution on the assets because of depreciation as the figures given are only book value.
57. In the Report, he set out what he had undertaken within the limited period. He was able to meet the creditors and the potential investor. He concluded that: -

“In conclusion, it is the Official Receiver’s opinion that it is essential to allow additional time for the investor to present revised timelines regarding their commitments to the transaction. This extension will provide an opportunity to evaluate the investor’s seriousness about the transaction and facilitate the initial deposit payment, which is a critical step in demonstrating their commitment to the process.

.....



By obtaining these revised timelines, we can ensure that all stakeholders are on the same page and that the investor is genuinely dedicated to moving forward. This approach is crucial for maintaining the integrity of the process and safeguarding the interests of all creditors involved.”

58. It would seem that some addendums were executed in November, 2024 which extended the timelines to May, 2025. This is what the creditors are opposed to.
59. It should be noted that the objectives of administration under section 522 is to maintain the Company as a going concern (thereby assist it pay its creditors, maintain jobs, produce revenue and help in national economy), to achieve a better outcome for the company’s creditors as a whole and to realize the property of the Company in order to make distribution to the secured creditors or preferential Creditors.
60. Looking at the debt portfolio, the competing interests with each creditor pulling its way, if there is a Company upon which section 522 of the Act should be imposed on is this one. If each of the creditor was left to pull its way as is clear from their conduct on record, the dismemberment of the Company assets would be so chaotic that the losses to the creditors would be insurmountable.
61. It is for the foregoing reason that the Court placed the Company under Administration on 13/9/2024 with the Official Receiver, who is nonaligned as the administrator. He was to ensure that the first objective under 522 of the Act, which is what all the Senior Lenders had been pursuing since 2021 was achieved. He has come back to Court and requests for the extension of time for 12 months.
62. While the Court is alive to the length the efforts to sustain the Company has taken (since 2021 between the Senior Lenders and the Company), the OR who took over in October, 2024 seems positive as to the proposed transaction going through and therefore assuring all creditors some returns and the Company continuing as a going concern.
63. In view thereof, I am inclined to extend the time sought but limited as per the Act, a period not exceeding six (6) months. I will also allow the OR to exercise the powers set out in Division 9 and 4<sup>th</sup> Schedule to the Act so as to achieve maximum benefit for all the creditors.
64. Accordingly, the Court makes the following orders: -
  - a) The Motion dated 24/7/2024 is dismissed.
  - b) The Motions dated 26/9/2024 are allowed in terms of prayer Nos. 2 thereof. The restraining orders are only to extend to the term of the Administration under the Official Receiver.
  - c) The Motions dated 10/12/2024 and 11/12/2024 are allowed as follows: -
    - (i) The administration of Multiple Hauliers (EA) Ltd is extended for a further period of six (6) months under section 594 (1) (b) of the *Insolvency Act*.
    - (ii) The Official Receiver do continue acting as Administrator as provided for under the provisions of the *Insolvency Act*.
    - (iii) The provisions of section 560 of the Act to continue to apply to the Company until the period extended herein lapses.
    - (iv) Each party to bear own costs.

**SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2025.**



**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**F. GIKONYO**

**JUDGE**

