



Star Coffee (K) Limited & 2 others v Imperial Bank Limited (Under Liquidation) & another (Civil Suit E910 of 2021) [2025] KEHC 1846 (KLR) (Commercial and Tax) (7 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1846 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E910 OF 2021
FG MUGAMBI, J
FEBRUARY 7, 2025**

BETWEEN

**STAR COFFEE (K) LIMITED 1ST PLAINTIFF
ELIZABETH KANINI MULUMBI 2ND PLAINTIFF
BENJAMIN MULUMBI MUTISO 3RD PLAINTIFF**

AND

IMPERIAL BANK LIMITED (UNDER LIQUIDATION) DEFENDANT

AND

KENYA DEPOSIT INSURANCE CORPORATION ... INTENDED DEFENDANT

RULING

Background and Introduction

1. For determination is the plaintiffs' Notice of Motion application dated 8th June 2023, filed under section 56(2) of the *Kenya Deposit Insurance Act* 2012, Order 1 rule 10, order 51, rule 1 of the *Civil Procedure Rules* and article 159(2) (d) of the *Constitution* of Kenya.
2. The plaintiff seeks an order to enjoin Kenya Deposit Insurance Corporation (KDIC) as the 2nd defendant in this suit and an order for the 2nd defendant to continue with the proceedings in place of the 1st defendant who was placed under liquidation on 8th December 2021.
3. The basis of the application is that the plaintiffs commenced these proceedings as against the 1st defendant through a plaint dated 11th November 2021 when it was under receivership by KDIC as appointed by Central Bank of Kenya. Subsequently, the 1st defendant was placed under liquidation and KDIC was appointed as its liquidator.



4. The plaintiffs aver that they are required by section 56 of the *Kenya Deposit Insurance Act* (KDI Act) to seek this court's sanction to enable them to proceed with their case against KDIC in place of the 1st defendant which is under liquidation.
5. In opposition to the instant application, the 1st defendant (the Bank) filed a replying affidavit sworn by Billy Ubindi on 12th October 2023. The Bank argues that the appointment of KDIC as liquidator does not affect these proceedings. As such, it is the Bank's position that the participation of KDIC is unnecessary as there is no claim against it.
6. KDIC also filed a replying affidavit sworn on 30th October 2023 by David Irungu, an employee and director in charge of bank resolution at KDIC. Agreeing with the Bank, Mr. Irungu argues that KDIC is not a proper party to the suit as the 1st defendant, although in liquidation, has the legal capacity to sue and to be sued in its own capacity as a legal entity.
7. He contends that the plaintiffs' application is based on a misunderstanding of the law governing the liquidation of financial institutions and KDIC's mandate; that sections 55 and 56 of the *KDI Act* do not mandate the joinder of KDIC in proceedings involving an institution in liquidation. Further that sections 50(5) and 45(5) of the *KDI Act* protect KDIC from liabilities of the institutions it liquidates and establish KDIC as an agent, not liable for the institutions' obligations.
8. Mr. Irungu argues that the plaintiffs will not suffer any prejudice if the application is struck out as the 1st defendant can defend the suit in its own right and prayed to have the application dismissed with costs.

Analysis and Determination:

9. I have considered the pleadings, evidence, submissions, and cases cited by the parties in support of their respective positions.
10. The issue for determination is: whether KDIC ought to be enjoined in this suit as the 2nd defendant and whether it should continue with this suit in place of the 1st defendant who was placed under liquidation on 8th December 2021?
11. The *KDI Act* establishes the KDIC, whose mandate is outlined in Section 5. Specifically, its role includes providing a deposit insurance scheme for customers of member institutions and overseeing the liquidation and winding up of any institution for which it has been appointed as receiver or liquidator, in accordance with the *Act*. The relationship between the KDIC and such an Institution is as specified in Section 45(5) of the *Act*.
12. Section 45(5) of the *KDI Act* provides:

“Where the Corporation or the appointed person has assumed control of an institution, the Corporation or the appointed person shall—

 - a. be deemed to be acting as the agent of the institution in carrying on the businesses and managing the assets, liabilities and affairs of the institution or in carrying out any transaction relating to the institution or its assets, businesses and affairs, including disposal of assets; and
 - b. note, by reason of having assumed control of the institution or any action taken by it, be held to have assumed or incurred any obligation or liability of the institution for its own account.”



13. Further, Section 50(5) of the *KDI Act* states:

“Where the Corporation exercises one or more powers under this section, the Corporation shall not, by reason of the exercise of such powers, be held to have assumed or incurred any obligation or liability of the institution for its own account.”

14. My understanding of the above provisions is that KDIC’s obligations include receiving, liquidating, and winding up any institution for which it is appointed. It performs these roles as an agent of the institution. However, by assuming control, KDIC does not take on or incur the institution’s liabilities as its own.

15. This position was enunciated in the case of *Metto V Chase Bank (Kenya) Ltd*, [2023] KEELC 19886 (KLR) where the court held:

“The law is clear that once KDIC has been appointed as a receiver or liquidator of an institution, it becomes an agent of that institution. The law then protects it from assuming any obligations or liability of the Institution for its own account. ... The only instance where the corporation can be sued for damages is where any person has sustained losses as a result of any action of the corporation. This is clear from section 46 (2) of the *Act*.”

16. The upshot of the foregoing analysis is that the KDIC cannot assume any liabilities of the 1st defendant.

Disposition

17. Accordingly, the instant application is devoid of merit and the same is dismissed with costs awarded to the 1st defendant and the intended 2nd defendant.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 7TH DAY OF FEBRUARY 2025.

F. MUGAMBI

JUDGE

