



**Veleta t/a Betabase Auctioneers v Savannah Cement Limited  
(Under Administration) (Miscellaneous Application E222 of 2024)  
[2025] KEHC 1494 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1494 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E222 OF 2024**

**F GIKONYO, J**

**FEBRUARY 13, 2025**

**BETWEEN**

**JORL MWANZIA VELELA T/A BETABASE AUCTIONEERS ..... APPLICANT**

**AND**

**SAVANNAH CEMENT LIMITED (UNDER  
ADMINISTRATION) ..... RESPONDENT**

**RULING**

1. The Applicant, in the Notice of Motion dated 11<sup>th</sup> November 2024 seeks for entry of judgment against the Respondent in terms of the Certificate of Taxation dated 30<sup>th</sup> October 2024. The application is expressed to be made under Rule 55(2) of the Auctioneers Rules, Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 51 Rule 1 of the Civil Procedure Rules.
2. The application is supported by the annexed affidavit sworn by the Applicant on 11<sup>th</sup> November 2024.

**Background**

3. On 20<sup>th</sup> July 2023, the Applicant served the Respondent with a Proclamation Notice in the execution of Warrants of Attachment and Sale of its movable assets issued in Nairobi High Court Miscellaneous Application No. E607 OF 2022: Ochieng Teddy Advocates v Savannah Cement Limited.
4. Subsequently, the Respondent was placed under administration through Gazette Notice No. 11030 published on 18<sup>th</sup> August 2023, effective from 21<sup>st</sup> July 2023.



5. The Applicant claims to have applied for and was granted leave to file its bill of costs dated 15<sup>th</sup> May 2024. The said bill was served upon the Respondent's Administrator, PKF Kenya LLP, on 5<sup>th</sup> June, 2024.
6. Through a Ruling dated 24<sup>th</sup> September, 2024, the Taxing Officer taxed the said bill at Kshs 9,687,307/-. A Certificate of Taxation dated 30<sup>th</sup> October 2024 was issued in the Applicant's favour.

### **Analysis and Determination**

7. Through the instant application, the Applicant urges the Court to enter judgment in its favour because the execution process has not been disputed and the certificate of taxation has not been set aside or altered.

### **Jurisdiction**

8. The Applicant asserted that this Court has the jurisdiction to enter judgment in its favour against the Respondent.
9. Jurisdiction is everything; it is sine qua non for the exercise of judicial authority or adjudication on a dispute. It is therefore, considered first. Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR
10. Competence of these proceedings is in issue.
11. The taxation proceedings were initiated when the Respondent company was under administration. Rendering, Section 560 of the [Insolvency Act](#), 2015 relevant consideration; it provides that: -

“ 560.

(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.”

12. The record shows that, the Applicant filed a Notice of Motion dated 14<sup>th</sup> March 2024 seeking for orders: -
  1. That this Application be certified urgent and heard ex parte in the first instance.
  2. That this Honourable Court be pleased to grant leave to the Applicant herein exparte for the Applicant to file and have his Auctioneer's Bill of Costs taxed against the Respondent Company that was placed under Administration vide Gazette Notice No. 11030 published on 18<sup>th</sup> August 2023 with effect from 21<sup>st</sup> July 2023.
  3. That costs of this Application be provided for.



13. On 15<sup>th</sup> March 2024, when the matter was coming up for directions, the Court (Hon. Mulwa P.) issued an Order in the following terms: -

‘...the application is certified urgent and prayer No. 2 thereof is granted.’

14. From the record, the Applicant’s ex parte application for leave to file the bill of costs was not served upon the Respondent’s administrator. The order granting the leave was made ex parte.

15. Be that as it may, eminently valid concern is whether the applicant obtained the consent of the administrator or the approval of the court, to begin or continue legal proceedings (including execution and distress) against the company or the company’s property under administration.

16. It bears repeating that, Section 560 of the *Insolvency Act*, 2015 which provides that: -

“ 560.

(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. The requirement for the administrator’s consent or the approval of Court is to ensure that the objectives of placing the company under administration under section 522 of the *Insolvency Act* are achieved.

18. Some courts have held that, application for approval of the court should be made in the Insolvency Court dealing with the company’s insolvency proceedings. Because, any other court: -

“...will be acting with minimal or insufficient information regarding the company which might defeat the legislative intention in sections 522 and 560 of the Act.” Ng’ang’a v *Cytonn High Yield Solutions LLP (Miscellaneous Application E616 of 2021)* [2022] KEHC 3368 (KLR) (Commercial and Tax) (26 May 2022) (Ruling) and Lambart Lwanga Ogochi & 4 Others v. Ponginangipalli Venkata Ramana Rao [2022] eKLR.

19. There are other important elements in the *Insolvency Act*.

20. The *Insolvency Act* does not use the word ‘leave of the court’ in section 560(1)(d). It uses the words ‘with the approval of the Court.’ Which carry very different connotation and meaning.

21. Section 560A of the *Insolvency Act* refers to the application under section 560 as; ‘the application for approval to lift moratorium’ and also sets out factors that the court must consider in determining whether to grant its approval; including, but not limited to the legitimate interests of the applicant and the legitimate interest of the creditors of the company, purpose of the administration etc; placing focus on consideration of the application with the administration of a company in the front view. It was never intended by the said law to recede the administration of the company to the rear view in considering an application for approval by the court to a party’s application to begin or continue with proceedings against a company or its assets under administration.



22. Section 560 of the *Insolvency Act* does not envisage ex parte application for approval of the court. The section provides for administrator's consent or approval of the court to begin or continue with proceedings while a company is under administration.
23. From the above, I find that the applicant did not seek consent of the administrator or approval of the court to commence proceedings; denying the application before the court a foot on which to stand. The application dated 11<sup>th</sup> November 2024 is incompetent and is struck out with no order as to costs. The dismissal, however, is not a bar to a competent application if filed in the future.
24. Orders accordingly.
25. The Application dated November 11, 2024 is struck out with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025**

.....

**F. Gikonyo M**

**Judge**

In the presence of: -

Ms. Ndinda for Auctioneer

