



**Wangia v Friends Chemist Company Limited (Commercial Petition E019 of 2023)
[2025] KEHC 1040 (KLR) (Commercial and Tax) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1040 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL PETITION E019 OF 2023**

MN MWANGI, J

FEBRUARY 21, 2025

THE MATTER OF FRIENDS CHEMIST COMPANY LIMITED (C. 38142)

-AND-

IN THE MATTER OF THE COMPANIES ACT NO. 12 OF 2015

-AND-

IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015

-AND-

IN THE MATTER OF THE CIVIL PROCEDURE ACT

BETWEEN

PETER ODONGO WANGIA PETITIONER

AND

FRIENDS CHEMIST COMPANY LIMITED RESPONDENT

RULING

1. Before me is a Notice of Motion application dated 24th October 2023 filed pursuant to the provisions of Sections 2, 103, 123, 124, 128, 129, 143 & 171 of the *Companies Act*, Sections 363 (1)(b), 365, 521, 522, 524, 525, 530, 531, 532, 533 & 586 of the *Insolvency Act*, Rule 5(a) of the High Court Rules, Sections 1, 1A, 3, 3A, 5 & 63 of the *Civil Procedure Act*, and all other enabling provisions of the law. The petitioner prays for orders that he be appointed as the interim Administrator of the respondent company with Executive Director powers or as specified by the Court and thereafter, he be allowed to issue a Notice under Section 365 of the *Insolvency Act* via the Kenya Gazette or other suitable means.



2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Peter Wangia, the petitioner herein. He averred that the respondent company was incorporated in 1988 with two Shareholders and Directors, namely, Mr. Jared Waudo Wangia and Ms Christine Ongayo Wangia, who passed away in August 2022. He contended that no succession proceedings had been initiated and the beneficiaries had not reached a consensus on the same. Mr. Peter Wangia averred that before the death of Mr. Jared Waudo Wangia, he was hospitalized at UW Medicine, Kirkland WA, and accrued a medical bill of USD 247,111.00 after a Kshs.200,000/= contribution from the petitioner's siblings. Mr. Peter Wangia stated that he settled the said bill and informed his siblings on 22nd August 2022 that the aforesaid bill would be covered by the estate of the late Jared Waudo Wangia.
3. Mr. Peter Wangia stated that the respondent company which a going concern, operates real estate properties and a now non-operational pharmacy. In addition, he stated that the company owns assets valued at Kshs.30,000,000/= and has liabilities of Kshs.257,388.00. He noted that the estate of the late Jared Waudo Wangia has a deficit of Kshs.16,910,000/=, making the deceased's shares in the respondent company his only recourse as a creditor. He further stated that the company is indebted to him through the estate, making him a contingent creditor under Section 532(4) of the *Insolvency Act*. Mr. Wangia also claimed to be a beneficiary of the late Jared Waudo Wangia and the late Christine Wangia's estates and asserted his right to file this petition in line with the provisions of Section 365(1) of the *Insolvency Act*.
4. He contended that the respondent company continues to generate rental income but lacks management and accountability due to a leadership vacuum, while the pharmacy ceased operations after its license expired in 2022. He mentioned that the company has been unable to project its assets and liabilities and there has been statutory legal non-compliance. He emphasized that succession is unfeasible due to beneficiary disputes and financial deficits. He offered to consolidate and settle the company's debts, oversee its operations, and report to the Court. He averred that if the company proves non-viable, he will return to Court for further directions. He urged the Court to grant the orders sought in order to safeguard company's assets, financial stability, and stakeholder interests.
5. In opposition to the application, the respondent company filed a replying affidavit sworn on 5th March 2024 by Mr. Elisha Wambiji Waudo & Ms Elizabeth Naukusi Wangia, being Administrators of the estates of the late Jared Waudo Wangia and Christine Ong'ayo Wangia. The Administrators stated that upon the passing away of Mr. Jared Waudo Wangia and Ms Christine Ong'ayo Wangia, who were the only Directors and Shareholders of the respondent company, their shares devolved to their estates, necessitating succession proceedings rather than company administration. They contended that the petitioner lacks locus standi, as he has not obtained a grant of representation, and he has not proved his creditor status in a civil Court.
6. Mr. Elisha Wambiji Waudo and Ms Elizabeth Naukusi Wangia accused the petitioner of intermeddling in the estates of the deceased persons by unilaterally taking control of the respondent company's assets, including collecting rent from tenants under his own company, Chebu Pharmaceutical Limited, renaming company properties, and barring other beneficiaries from accessing the ancestral home. They contended that his actions demonstrate an intent to fraudulently seize company assets rather than protect its interests. They maintained that the respondent company is a separate legal entity from its Shareholders, and any debts owed by a deceased Shareholder cannot justify the present claim.
7. In a rejoinder, the petitioner filed a further affidavit sworn on 22nd March 2024 by Mr. Peter Wangia, the petitioner herein. He contested the validity of Mr. Elisha Wambiji Waudo and Ms Elizabeth Naukusi Wangia's administration of the deceased persons' estates, claiming wrongful exclusion despite being a



- lawful beneficiary. He asserted that Ms Christine Wangia had bequeathed portions of the company, a decision not contested by Mr. Jared Waudo Wangia. He averred that the respondent company's shares have not legally devolved to the deceased persons' estates, as no appointed Executors or Administrators currently exist.
8. Mr. Peter Wangia accused Mr. Elisha Wambiji Waudo and Ms Elizabeth Naukusi Wangia of obstructing succession proceedings and mediation efforts. He maintained that he has acted transparently in managing company assets and emphasized that his intent is to ensure proper administration and accountability. He asserted that succession proceedings are insufficient to address the company's assets and liabilities, stressing that the absence of Directors and Shareholders renders the company incapable of addressing claims, thus necessitating the urgent appointment of an Administrator.
 9. The application herein was canvassed by way of written submissions. The petitioner's submissions were filed on 25th March 2024 and 14th May 2024 by the law firm of Kibungei & Company Advocates, whereas the respondent's submissions were filed on 8th April 2024 by the law firm of K & A Advocates. The submissions were highlighted on 27th November 2024.
 10. Mr. Keya, learned Counsel for the petitioner relied on the case of Rashik Kumar Punja Shah & another v Chase Bank Limited (In Liquidation) & another [2021] eKLR, and cited the provisions of Sections 365(1) & 532 of the *Insolvency Act* in submitting that the petitioner has the requisite locus standi to file the instant application as a beneficiary of the estates of the late Jared Waudo Wangia and Christine Wangia, and being a creditor of the respondent company. He further cited the provisions of Section 533 of the *Insolvency Act* and asserted that this Court has the powers to grant the orders sought in the instant application. Mr. Keya referred to the Court's holding in the case of Kimeto & Associates Advocates v KCB Bank Kenya Limited & 2 others [2021] KEHC 242 (KLR), and contended that the petitioner has established that the respondent company is unable to pay its debts to third parties and that the debt is due.
 11. Counsel relied on the case of Midland Energy Limited v George Muiruri T/a Leakeys Auctioneers & another [2019] eKLR, and contended that the applicant seeks appointment as the interim Administrator of the respondent company to ensure the company remains operational and meets its financial obligations, so as avoid liquidation. He argued that the petitioner's business experience qualifies him for the role and emphasized the need for public notice to identify creditors and address statutory obligations. He cited the Court of Appeal case of In Re Estates of Gitere Kahura & Mary Nyokabi [2018] eKLR, and asserted that succession proceedings are inappropriate for resolving the respondent company matters, as they involve not only the deceased persons' shares but also the company's separate assets and liabilities.
 12. Mr. Ondieki, learned Counsel for the respondent submitted that Sections 365(1) and 532(4) of the *Insolvency Act* do not allow the appointment of a creditor as an Administrator. He emphasized that in order for a company to be liable, a creditor must be linked to the company, but not to its Shareholders or Directors. He cited the case of Omondi v National Bank Of Kenya Ltd & others [2001] I EA, and argued that the petitioner's claim of paying medical expenses for the late Jared Waudo does not bind the respondent company, as it is a separate legal entity from its Directors and Shareholders, and not responsible for their personal debts. Counsel stated that the petitioner acknowledges that his creditor status can only be determined after a full hearing but still seeks the respondent company's administration and his appointment as an interim Administrator without proving his claim.
 13. Mr. Ondieki asserted that the petitioner's refusal to prove his creditor status at this stage makes the application a waste of judicial time and should be dismissed. He referred to Section 365(1) of the



Insolvency Act which applies to insolvent deceased persons' estates, and argued that the same was misinterpreted by the petitioner, who wrongly applied the said provisions which are meant for deceased persons' estates, to a company. He asserted that since the respondent company is a separate legal entity from the deceased Shareholders, the petitioner lacks the requisite locus standi to seek its administration. Counsel submitted that the petitioner has not demonstrated the respondent company's insolvency as required by Section 531 of the Insolvency Act.

14. He pointed out that the petitioner cited minor liabilities of Kshs.257,388.00, while the company had generated Kshs.1,440,000/= in rental income over 16 months, which income, the petitioner has been collecting. He submitted that in the absence of proof of the respondent company's inability to pay its debts, the request for administration should be dismissed. He also highlighted that under Sections 526 and 701(5) of the Insolvency Act, only authorized insolvency practitioners or qualified individuals (Advocates, Accountants, or Chartered Public Secretaries) can be appointed as Administrators or Official Receivers. Counsel expressed the view that the petitioner being a businessman and Director of Chebu Pharmaceutical Limited, does not meet the said qualifications and he does not qualify for appointment as an interim Administrator.
15. In a rejoinder, Mr. Keya submitted that the petitioner is collecting rent in trust of the deceased's estates. He further submitted that the petitioner's siblings had offered to take over the running of the respondent company but they abdicated the said responsibility. He asserted that if the Court finds that the petitioner is not qualified to act as an Administrator, the Court can appoint any other person to act as an Administrator of the respondent company.

Analysis and Determination.

16. I have considered the instant application, the grounds on the face of it, and the affidavits filed in support thereof, as well as the replying affidavit by the respondent. I have also considered the written submissions by Counsel for the parties. The issues that arise for determination are –
 - i. Whether the petitioner has the requisite locus standi to file the instant application; and
 - ii. If the instant application is merited.

Whether the petitioner has the requisite locus standi to file the instant application.

17. Locus standi is defined by the Black's Law Dictionary 9th Edition, as the right to bring an action or to be heard in a given forum. It is trite that the lack of the requisite capacity to bring a suit goes to the root of a case, and without locus standi, the suit cannot stand. The said position was expressed by the Court in Priscilla Jesang Koech v Rebecca Koech & 3 others [2018] eKLR, as hereunder–

Locus standi is the cornerstone of any case. Before a party files a case, he or she must be certain that they are clothed with the requisite capacity to sue and be sued.

18. In the oft cited case of the Law Society of Kenya v Commissioner of Lands & others, Nakuru High Court Civil Case No.464 of 2000, the Court held that -

Locus Standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law. Further in the case of Alfred Njau and Others v City Council of Nairobi (1982) KAR 229, the Court also held that;-



“the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

19. The petitioner stated that the respondent company was established in 1988 with two Shareholders and Directors, Mr. Jared Waudo Wangia and Ms Christine Ong’ayo Wangia, who passed away in August 2022. He claimed responsibility for settling a medical bill of USD 247,111.00 for the late Jared Waudo Wangia, which was to be covered by his estate. The petitioner further stated that the estate has a deficit of Kshs.16,910,000/=, leaving the deceased’s shares in the company as his only means of recovering the debt. Citing Sections 365(1) & 532 of the Insolvency Act, the petitioner argued that he has the requisite locus standi to file the instant application as a beneficiary of both estates of the deceased persons and as a creditor of the respondent company.
20. The respondent on the other hand argued that after the deaths of Mr. Jared Waudo Wangia and Ms Christine Ong’ayo Wangia, their shares in the company devolved to their estates, making succession proceedings necessary instead of company administration. They contended that the petitioner lacks the requisite locus standi to file the application herein because he has not obtained a grant of representation or proved his creditor status in a civil Court. The respondent emphasized that the company is a separate legal entity from its Shareholders, and as such, debts owed by a deceased Shareholder do not support the petitioner’s claim.
21. It is not in contest that the respondent company does not owe the petitioner personally. The petitioner has consistently claimed that the estate of the late Jared Waudo Wangia, a Director and Shareholder of the company, is indebted to him as he settled the deceased’s hospital bill of USD 247,111.00, less Kshs.200,000/=, which was covered by his siblings. The petitioner bases his right to file the current application on the provisions of Sections 365(1) and 532 of the Insolvency Act which provides that –
Section 365 (1)
 1. An application to the Court for an order under this Part may also be made –
 - a. by a creditor of the deceased's estate, if the creditor's debt has reached the threshold for a creditor's application for bankruptcy; or
 - b. by a beneficiary.
 2. A creditor or beneficiary may apply for such an order if –
 - a. the executor or Administrator has not applied under this Part, and after being requested in writing to apply, fails to apply within twenty-one days after receiving the request; or
 - b. no executor or Administrator has been appointed, and no application has been lodged in the Court under section 364, within four months after the date of the debtor's death.
 3. In the case of an application under subsection (2)(a) for an order that the estate be administered under this Part, the Court may not make the order before the expiry of two months after the date when probate or letters of administration were granted, but this restriction does not apply if –
 - a. the executor or Administrator has consented;
 - b. the applicant proves that –



- i. the deceased was not insolvent at any time within three months before the death; or
 - ii. the executor or Administrator has favoured or is about to favour any particular creditor or creditors; or
 - c. in the Court's opinion, the executor Administrator is not properly administering estate.
4. The Court may allow an application under subsection (2)(b) to be lodged before the expiry of four months after the date of the debtor's death if satisfied that -
- a. the deceased was insolvent at any time within the three months preceding the death; or
 - b. the estate that should have been available for the deceased's creditors is rapidly diminishing.

Section 532

- 1. An application to the Court for an administration order in respect of a company may be made only by the following persons –
 - a. the company;
 - b. the Directors of the company;
 - c. one or more creditors of the company;
 - d. a combination of persons specified in paragraphs (a) to (c);
 - e. any other person of a class prescribed by the insolvency regulations for the purposes of this section.
 - 2.
 - 3.
 - 4. In subsection (1), "creditor" includes a contingent creditor and a prospective creditor.
22. On perusal of the provisions of Section 365 of the *Insolvency Act*, I agree with the respondent that the said provisions apply to applications for administration of insolvent deceased persons' estates and not companies. This Court further notes that even if the present application had been filed against the estate of the late Jared Waudo Wangia, the petitioner has not demonstrated any of the circumstances provided for under Section 365 of the *Insolvency Act* to warrant being granted the orders sought herein. For instance, the petitioner does not dispute that Mr. Elisha Wambiji Waudo & Ms Elizabeth Naukusi Wangia are Administrators of the estates of the late Jared Waudo Wangia and the late Christine Ong'ayo Wangia. Instead, he submitted that he has filed an application for revocation of grant, but he has not demonstrated compliance with the provisions of Section 365(2) of the *Insolvency Act*.
23. In view of the above and since the alleged debt is owed by the estate of the late Jared Waudo Wangia and not the respondent company, this Court finds that the petitioner cannot rely on Section 365 of the *Insolvency Act* in asserting that he has the requisite locus standi to file the instant application.
24. While relying on the provisions of Section 532 of the *Insolvency Act*, the petitioner asserted that he is the respondent company's contingent creditor. The *Insolvency Act* has not defined who a contingent creditor is, however bearing in mind the meaning of the word contingent, this Court is of the considered view that a contingent creditor is an individual who becomes a creditor in the future,



depending on the occurrence of a specific event. As such, the petitioner's argument that the respondent company is indebted to him as a contingent creditor due to the late Jared Waudu Wangia's hospital bills is farfetched. The petitioner as the beneficiary of the estate of the late Jared Waudu Wangia, and as a creditor of the said estate, has recourse against the said estate under Part V of the *Insolvency Act*, and cannot go after the respondent company just because the deceased was a Director and Shareholder of the said company.

25. As was pronounced in the case of *Salomon v Salomon & Co. Limited* [1897] AC 22, a company is a separate and distinct legal entity independent from its Directors and Shareholders. That being the case, and the fact that the petitioner's alleged claim is against the estate of the late Jared Waudu Wangia and not the respondent company, it is my finding that the petitioner did not have the requisite locus standi to file the instant application.
26. In the end, this Court finds that the application herein is not only incompetent but also fatally defective for want of locus standi.
27. The application herein is hereby struck out with costs to the respondent.
It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF FEBRUARY 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

No appearance for the petitioner

No appearance for the respondent

Ms B. Wokabi – Court Assistant

NJOKI MWANGI, J.

