



REPUBLIC OF KENYA



In re Xplico Insurance Company Limited (Under Statutory Management) (Petition E083 of 2024) [2025] KEHC 2410 (KLR) (Commercial and Tax) (5 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2410 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
PETITION E083 OF 2024**

MA OTIENO, J

MARCH 5, 2025

RULING

1. Before this Court for determination is the Notice of Motion dated 04/12/2024. The Application is brought under Sections 427 and 437 of the *Insolvency Act* as well as Section 123 of the *Insurance Act*.
2. In the application, the Applicant seeks the following order as the substantive prayer:
 - “2. That pending the hearing and determination of the application and the Liquidation Petition filed herein, a temporary order be issued appointing any of the following three licenced Insolvency Practitioners as Provisional Liquidator of Xplico Insurance Company Limited (Under Statutory Management):
 - a. Diana Nduku Mumo
 - b. Etemesi Elfes Oniang’o
 - c. Kolluri Venkata Subbaraya Kama Sastry.”
3. The Application is based on the grounds stated on the face of the motion and is also supported by the affidavit sworn on 09/12/2024 by Godfrey Kimaiyo Kiptum, the Commissioner of Insurance and the Chief Executive Officer of the Insurance Regulatory Authority. According to Mr. Kiptum, in the year 2015, Xplico Insurance Company Limited began experiencing challenges in complying with various mandatory provisions of the *Insurance Act*, including Capital Adequacy Requirements, and subsequently engaged in various capital-raising initiatives, all of which were unsuccessful.
4. It was deponed that the Insurance Regulatory Authority [The Applicant herein] made several attempts between the years of 2016 and 2023 to ensure the survivability of the company, but all attempts were futile. Following the failure, the company was, on 7th December 2023, placed under Statutory



Management in accordance with the provisions of Section 67C (2) of the Insurance Act by the Petitioner for a period of one (1) year.

5. It was further deponed that the Commissioner with the approval of the Board of the Authority appointed the Policyholders Compensation Fund (PCF) as the Statutory Manager and vide a letter dated 7th December 2023 providing its terms of reference which included to establish and present a report on whether the Insurer could be revived and if so, how, in order to protect policyholders and other stakeholders, or whether the Insurer would be placed under liquidation as provided under legislation.
6. Mr. Kiptum deponed that the Statutory Manager submitted a report on the 8th of November, 2024, stating that the Insurance Company is insolvent and its liquidity levels are not adequate to meet its statutory, financial and legal obligations as required under the Insurance Act, there by recommending liquidation.
7. The recommendations of the Statutory Manager were considered by the Petitioner's/Authority's Board on its special meeting of 27th November 2024 where it was approved that an application be made to Court by the Commissioner of Insurance for the liquidation of Xplico Insurance Company Limited (Under Statutory Management) in accordance with Section 123 of the Insurance Act, hence the instant Petition and Application.
8. The application was canvassed by way of written submissions. The Petitioner/Applicant filed its submissions dated 04/03/2025. In its submissions, the Applicant reiterated its position in the application and urged this court to grant an interim liquidation order in respect of the company.

Analysis and Determination

9. The Court has carefully considered the application and the submissions filed herein by the Applicant/Petitioner. The only issue for consideration is whether the Court should appoint as an interim liquidator of the company pending the hearing and determination of the liquidation petition.
10. Section 437 of the Insolvency Act provides:
 - “ 437. Appointment and powers of provisional liquidator
 - (1) The Court may appoint a provisional liquidator either on or after, or at any time before, the making of a liquidation order in respect of a company.
 - (2) Only the Official Receiver or an authorised insolvency practitioner is eligible for an appointment as a provisional liquidator.
 - (3) A provisional liquidator shall perform such functions and may exercise such powers as the Court may specify in the order appointing the provisional liquidator.
 - (4) The acts of a person appointed as provisional liquidator of a company are valid despite any defect in the person's appointment or qualifications.”
11. In the present case, a petition has already been filed. From the evidence contained in the supporting affidavit, it is clear that the company cannot meet its financial obligations. A financial statement that was produced attests to that. I find and hold that the evidence warrants the appointment of an interim



liquidator pending the determination of the liquidation petition. He shall be responsible for the preservation of the assets of the company, which will be used for the repayment of the debts owed to all the creditors.

12. Having established that there is sufficient evidence on record warranting the appointment of an interim liquidator, the next task for this court is to determine who amongst the insolvency practitioners listed in the application is to be appointed as an interim liquidator. On this, I chose to go with the order as per the listing and hereby appoint Diana Nduku Mumo as an interim liquidator in respect of the company.
13. From the evidence availed by the Petitioner/Applicant, specifically, the letter of 5th December 2024, I note that all three persons proposed by the Applicant for appointment are all Insolvency Practitioners, duly licenced as at October 2024.
14. Accordingly, the application herein is allowed, and the Court makes the following orders: -
 - a. Diana Nduku Mumo is hereby appointed as the provisional liquidator with the following functions: -
 - i. To trace, take possession of, collect, recover, protect, and preserve the value of the assets of the company pending the determination of the liquidation petition.
 - ii. To carry on the business of the company for the benefit of the liquidation herein.
 - b. Costs in the Cause
15. It is so ordered.

SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS 5TH DAY OF MARCH, 2025

ADO MOSES

JUDGE

In the presence of: -

C/A – Moses

Odongo.....for Petitioner/Applicant

.....N./A.....for Respondent

