



REPUBLIC OF KENYA



Njenga (Suing as the Liquidator of Hoggers Ltd) v Pevans East Africa Ltd (Insolvency Petition E003 of 2021) [2025] KEHC 2841 (KLR) (Commercial and Tax) (12 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2841 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E003 OF 2021
A MABEYA, J
MARCH 12, 2025**

BETWEEN

OWEN KOIMBURI NJENGA (SUING AS THE LIQUIDATOR OF HOGGERS LTD) PETITIONER

AND

PEVANS EAST AFRICA LTD CREDITOR

RULING

1. Before Court is the application dated 29/5/2024. The same was brought under sections 240 and 241 of the [Companies Act 2015](#) and order 51 rule 1 of the [Civil Procedure Rules 2010](#).
2. The application sought to compel the respondent and any person acting on its behalf to grant the Liquidator unconditional access to the Company's premises at Ngong road Branch next to Uchumi Hyper for purposes of removal of the Company's assets and goods. It also sought assistance of the OCS Kibera police station in facilitating the order for access.
3. The application was supported by the grounds set out on the face of the Motion and the affidavit of Owen Koimburi Njenga sworn on even date. He stated that being the liquidator of Hoggers Limited he had been unable to auction the Company's assets located at the Ngong road branch. That the landlord of the premises had been uncooperative and had locked the premises with the Company's goods therein.
4. That the landlord was an unsecured creditor and his actions were a threat to the priority of payments to the preferential and other creditors. That the liquidation deadline was fast approaching and it was the liquidator's intention to have liquidated all assets and file a distribution schedule before the next Court date.



5. The application was opposed by the respondent vide a replying affidavit dated 14/6/2024 sworn by Robert Macharia. It was the respondent's position that it had been in constant communication with the liquidator and it had issued a notice of termination of the License agreement on 18/5/2023. That the liquidator had informed the respondent that pursuant to the license agreement, the notice period was three months after the date the termination notice was issued.
6. That since the notice period lapsed, the liquidator had not informed the respondent a date for the auction and therefore it had exercised its right of forfeiture in accordance with the license agreement. That the respondent cannot grant access to premises which license was terminated on 18/8/2023.
7. The application was canvassed by way of written submissions which I have considered. The applicant submitted that the respondent failed to provide documentation to the applicant informing him that it had exercised its right of forfeiture. That section 444 of the *Insolvency Act* grants the liquidator authority to control and realize the Company's assets for the benefit of all the creditors.
8. Further, that pursuant to section 430 of the *Insolvency Act* any attachment, sequestration or distress instigated against the assets of a company under liquidation was void. Counsel submitted that the assets in question were vital to the completion of the liquidation process.
9. The respondent submitted that the rent arrears owed to the landlord amounted to Kshs 30,522,585.60. That despite the liquidator's promise to the creditors that the assets would be liquidated, one year had lapsed before any steps could be taken. That the respondent had exercised its right of forfeiture pursuant to section 560(1) of the *Insolvency Act*. That the applicant had failed to communicate the date of the auction as alluded to in the letter dated 23/5/2023.
10. I have considered the pleadings and submissions by Counsel. The main issue for determination is whether the applicant has made out a case for the orders sought. The application was filed by the liquidator of the company seeking an unconditional entry or access to the Company's premises in order to remove any asset contained therein belonging to the Company for the purposes of conducting an auction. He invoked the provisions of the *Companies Act* section 240 and 241 which outlines the powers of a liquidator.
11. The applicant's case was that the liquidation process was ongoing but there was a challenge in accessing the Company's assets since the landlord was restricting entry. That the landlord/respondent was an unsecured creditor and therefore was affecting priority of payments to other preferential creditors.
12. The respondent on its part stated that pursuant to Section 560 of the *Insolvency Act*, it had informed the Liquidator of a notice to terminate the lease via a letter dated 18/5/2023. That thereafter, the Liquidator responded saying that the termination of the license agreement would only take effect after three months. That upon receiving no further communication as to auction, it exercised its right of forfeiture by peaceable re-entry into the premises.
13. From the foregoing, what seems to be the issue is whether the Liquidator has a right to enter the respondents premises after having been served with a termination notice. The parties have not disputed that the applicant was served with the termination of the license agreement which gave the applicant three months to vacate the premises.
14. The respondent relied on section 560 of the *Insolvency Act* which states that: -

“(1) While a company is under administration—



- (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;
- (b) a person may take steps to repossess goods in the company's possession under a credit purchase transaction only with the consent of the administrator or with the approval of the Court; if the Court gives approval, subject to such conditions as the Court may impose;
- (c) a landlord may exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company only with the consent of the administrator or with the approval of the Court; and
- (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.

(2) In giving approval for a transaction under subsection (1), the Court may impose a condition on, or a requirement in connection with, the transaction.”

15. The liquidation of companies is governed by the provisions of the *Insolvency Act*. Section 560 of the *Act* specifically addresses the administration of a company while an administration order is in effect. Under Section 560(c), a landlord is granted the right to exercise forfeiture by peaceable re-entry in relation to premises leased to the company. However, the Act stipulates that this can only be done with the consent of the administrator or approval of the court.
16. I have carefully considered the correspondence exchanged between the parties. In a letter dated 18/5/2023, the respondent issued a termination notice to the applicant citing continued breaches and requested the Liquidator to make the necessary arrangements for the handover of the licensed premises.
17. In response, through a letter dated 23/5/2023, the Liquidator asserted that section 560 was inapplicable in this instance, as a liquidation order had been issued. The letter further stated that a three-month written notice was required under the agreement and assured the respondent that they would be informed of the auction date.
18. From the record, it is clear that the Liquidator was fully aware of the terms of the license agreement. Consequently, the Company should have vacated the premises in accordance with the termination notice. However, the applicant failed to take any further steps and instead filed this application in an attempt to regain entry into the premises.
19. In *Planlink Limited v Wellcrest Hospital Limited* (Insolvency Petition E012 of 2021) [2022] KEHC 16025 (KLR) (Commercial and Tax) (2 December 2022) (Ruling), this court, while granting leave under section 560(c) of the *Insolvency Act*, held that the provision is not limited to administration but can also apply in liquidation. The court emphasized that a landlord should not be forced to endure continued losses due to non-payment of rent and, therefore, allowed the exercise of forfeiture.
20. Similarly, in this case, the applicant was given ample opportunity to hand over the licensed premises but failed to act. This continued occupation has caused financial detriment to the respondent/landlord who had already suffered losses when the Company was a going concern.



21. The mere fact that the applicant is a Liquidator does not absolve him from conducting the liquidation process with due diligence and in good faith. It is neither fair nor just to allow the landlord to continue incurring losses over the said premises due to the Liquidator's inaction.
22. In the premises, the application is without merit and is hereby dismissed. Each party to bear own costs.
It is so ordered.

SIGNED AT KISUMU THIS 19TH DAY OF FEBRUARY, 2025.

A. MA BEYA, FCI Arb

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MARCH, 2025.

F. GIKONYO

JUDGE

