



**Protea Chemicals Kenya Limited v General Plastics Limited (Under Administration)
(Civil Case E118 of 2018 & Insolvency Cause E003 of 2021 (Consolidated))
[2025] KEHC 2933 (KLR) (Commercial and Tax) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2933 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E118 OF 2018 & INSOLVENCY CAUSE E003 OF 2021 (CONSOLIDATED)**

F GIKONYO, J

MARCH 6, 2025

BETWEEN

PROTEA CHEMICALS KENYA LIMITED PLAINTIFF

AND

GENERAL PLASTICS LIMITED (UNDER ADMINISTRATION) .. DEFENDANT

RULING

Lifting the corporate veil

1. The plaintiff/ decree holder's Notice of Motion dated 9th August 2023, expressed to be brought under Rule 3(2) of Part I of the *High Court (Practice & Procedure) Rules* made under Section 10 of the *Judicature Act*, is seeking the following orders: -
 - (a) Summons do issue compelling Rashik Punja Shah, Prabhul Punja Shah, Batuk Punja Shah and Ashockkumar Punja Shah to attend Court to be orally examined on oath as to the Judgment Debtor's means and assets;
 - (b) The said directors be ordered to produce the Judgment Debtor's books of accounts, paper, documents and or evidence showing the affairs of the Company for the 3 years prior to the Company being placed in administration;
 - (c) A declaration be made pursuant to section 10002 of the *Companies Act* that the directors of the judgment debtor were knowingly carrying on the business of the Judgment Debtor with intent to defraud the creditors of the company and for fraudulent purposes and that they are responsible without any limitation of liability to pay the decretal sum together with costs in the suit, jointly and severally until payment in full;



- (d) That the veil of incorporation of the Judgment Debtor be lifted and the directors be made personally liable and ordered to settle the decretal sum and costs, jointly and severally until payment in full;
- (e) That the Decree Holder be granted leave to execute against the said directors of the Judgment Debtor.
2. The application is supported by the annexed affidavit sworn by the plaintiff's Finance Manager, Joseph Muriithi on 9th August 2023. The grounds are that:-
1. On 4th December 2019, this court passed a decree in this suit and ordered the defendant / judgment debtor to pay to the plaintiff the sum of USD \$ 333,814.10 together with costs taxed at Kes. 438,687.80 ("the decretal sum")
 2. Consequently, the decree holder extracted warrants of attachment and sale and proclaimed for execution, the judgment debtor's assets by a proclamation notice dated 19th December 2019.
 3. On 20th December 2019, I & M Bank Limited (the "Objector") filed an application seeking orders that there be a stay of execution against the said assets as it had the first right over the said assets under various debentures.
 4. On 15th January 2020, the judgment debtor was placed under Administration, and Mr. Ponangipalli Venkata Ramana Rao was appointed as administrator. The judgment debtor is still under administration under various orders by the court extending the term.
 5. In a letter dated 27th January 2020, the decree holder submitted its claim and proof of debt arising from the present suit, to the Administrator.
 6. To date, the decree holder has not received full payment or partial payment of the debt in line with the Second Schedule of the [Insolvency Act, 2015](#) on the priority of payments when a company is under administration.
 7. As per the statement of proposals issued by the administrator, all claims from creditors, including that of the decree-holder cannot be verified due to the absence of the statement of affairs from the directors of the Company.
 8. On 21st October 2022, this court ordered the directors of the company to furnish the administrator with the statement of affairs to enable him to convene the creditors meeting as per the provisions of the [Insolvency Act](#). To date, the directors have not complied with Section 564 of the [Insolvency Act](#) on the mandatory supply of the statement of company affairs.
 9. The judgment debtor is still legally subsisting and being maintained as a going concern by the administrator. The administrator has not removed any of the directors of the Company from office.
 10. The said directors conducted the business affairs of the judgment debtor in a fraudulent manner solely to defeat creditors including the decree holder and leading the Company into administration.

Response

3. The judgment debtor opposed the application through a preliminary objection (PO) dated 24th October 2023, a replying affidavit sworn by the administrator, Ponangipalli Venkata Ramana Rao, on 25th October 2023 and written submissions dated 3rd September 2023.



4. The core contention is that the application is incompetent as it was filed without the administrator's consent or approval of the Court in violation of Section 560 (1) (d) of the [Insolvency Act](#).
5. Additionally, the administrator deposed that since the debtor is under administration, all proceedings brought under Order 22 of the [Civil Procedure Rules](#) can only proceed with either his consent or with the approval of the Insolvency Court.
6. The administrator denied that the company has been run by the directors in a fraudulent manner calculated at defeating the creditors since he is in full control of the affairs of the Company. He deposed that he always furnished a list of invites to and minutes of creditors' meetings hence it can verify claims from creditors including the applicant's; that he always updates any creditor whenever he receives any request from such creditor and that he scheduled a virtual creditor meeting for 30th March 2023 and the invites for the same were sent to the creditors. He annexed the Company's Statement of Affairs and List of Creditors with the amounts owed as of 15th January 2020 and the minutes of the virtual creditors meeting.
7. In its submissions, the defendant relied on sections 2, 560 and 561 of the [Insolvency Act](#), the decisions in [Nakumatt Holdings Limited & another v Ideal Locations Limited](#) [2019] eKLR, [George Mureithi and others v Kenatco Taxis Limited \(In Receivership\)](#) [2016] eKLR, [Midland Energy Limited v George Muiruri t/a Leakeys Auctioneers & another](#) [2019] eKLR, [Kenya Union of Commercial, Food and Allied Works v Peter Obondo Kabi & Nakumatt Holdings Limited](#) [2018] eKLR, [Mark Properties Limited v Coulson Harney LLP Advocates and Le Mac Management Company Limited & another \(Applicants\)](#) [2021] eKLR.

Analysis and Determination

8. I have considered the application, the grounds, the PO, the respective affidavits and written submissions. The issues for determination are: -
 1. Whether the application enjoys consent by administrator or approval by the court.
 2. Whether the application is merited.
9. The defendant's PO is on the ground that the application is incompetent as it was filed without the administrator's consent or approval of the Court in violation of Section 560 (1) (d) of the [Insolvency Act](#).
10. A PO should be on a point of law not requiring the ascertainment of facts through evidence. See [Mukisa Biscuits Manufacturing Co. Limited v West End Distributors Ltd.](#) [1969] EA 696
11. From the record, the defendant company was placed under administration following a notice of appointment of the administrator dated 13th January 2020. The administrator was thereafter appointed on 14th January 2020. Subsequently, through orders of 15th January 2021, 3rd February 2022, 5th June 2023, 17th February, 2025, the court extended his term for 12 months periods with effect from the dates of the orders.
12. Section 560 (1) (d) of the [Insolvency Act](#) therefore applies. 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.”

13. The consent of the administrator or the approval of the Court is intended to make sure that the objectives of the placement of the company under administration are met. *Nakumatt Holdings Limited & another v Ideal Locations Limited* [2019] KECA 153 (KLR)
14. However, on 11th November 2021, the court consolidated this matter with Insolvency Cause No E003 of 2021. HCCC E118 of 2018 was designated as the lead file. The court saw it fit to consolidate the two matters as they were related.
15. Another significant matter; the tenure for administrator has been extended in numerous occasions; now up to 22nd of May, 2025. And, the administrator has not completed administration, or filed relevant proposals and recommendations on the viability of the company in accordance with the law.
16. According to the applicant, the judgment debtor is still legally subsisting and being maintained as a going concern by the administrator. The administrator has not removed any of the directors of the Company from office.
17. The administrator’s application for extension of tenure is pending and has been objected to by the creditors including the applicant. The court ordered on 17th February that creditors to file their replies to the said application.
18. The applicant claims their debt as well as for other creditors have not been verified by the administrator.
19. Whereas the application by the applicant required consent or approval by the court, the concerns raised therein are not a trifle as they complained that their debt has not been verified or settled. And, there is, by virtue of the consolidation a direct nexus between these two suits.
20. The applicant made a specific complaint; that, as per the statement of proposals issued by the administrator, all claims from creditors, including that of the decree-holder cannot be verified due to the absence of the statement of affairs from the directors of the Company.
21. The administrator, on the other hand, stated in reply to this application that, he can verify the debts from the creditors including the applicant.
22. On 21st October 2022, this court ordered the directors of the company to furnish the administrator with the statement of affairs to enable him to convene the creditors meeting as per the provisions of the *Insolvency Act*. The applicant claims that, to date, the directors have not complied with Section 564 of the *Insolvency Act* on the mandatory supply of the statement of company affairs.
23. The said directors have been accused of conducting the business affairs of the judgment debtor in a fraudulent manner solely to defeat creditors including the decree holder and leading the Company into administration.
24. The administrator denied that the company has been run by the directors in a fraudulent manner calculated at defeating the creditors since he is in full control of the affairs of the Company. He deposed that he always furnished a list of invites to and minutes of creditors’ meetings hence it can verify claims from creditors including the applicant’s; and that he always updates any creditor whenever he receives any request from such creditor.



25. These matters fall within the mandate of the administrator of which the administrator should render relevant reports to the creditors and the court.
26. The court noted that the tenure for the administrator had been extended on numerous occasions.
27. I will just re-state the law. ‘The administrator of a company shall perform the administrator's functions as quickly and efficiently as is reasonably practicable.’ S.524 of the [Insolvency Act](#). ‘An administrator is an officer of the Court, whether or appointed by the Court or not.’ S.525 of the [Insolvency Act](#).
28. And the administrator must work towards attaining the objectives of administration set out in s.522 of the [Insolvency Act](#), inter alia: — (a) to maintain the company as a going concern; (b) to achieve a better outcome for the company's creditors as a whole than would likely to be the case if the company were liquidated (without first being under administration); (c) to realise the property of the company in order to make a distribution to one or more secured or preferential creditors.
29. The administrator of a company; ‘shall perform the administrator's functions in the interests of the company's creditors as a whole’; and ensures ‘does not unnecessarily harm the interests of the creditors of the company as a whole.’ S.522 of the [Insolvency Act](#)
30. The administrator should file relevant reports with the court and the creditors which will provide the mirror through which the administration of the company and concerns raised herein will be seen. He shall do so by the next mention date.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 6TH DAY OF MARCH, 2025.

.....

**F. GIKONYO M
JUDGE**

In the presence of: -

1. Okelo for respondent
2. Githui for applicant
3. Kinyua C/A

