



**Midland Hauliers Ltd v Kotecha & 2 others (Insolvency Notice E008 of 2019)
[2025] KEHC 4598 (KLR) (Commercial and Tax) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4598 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY NOTICE E008 OF 2019**

MN MWANGI, J

APRIL 4, 2025

N THE MATTER OF MIDLAND HAULIERS LIMITED

-AND-

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

BETWEEN

MIDLAND HAULIERS LTD APPLICANT

AND

JAYESH P KOTECHA 1ST RESPONDENT

MANAGING DIRECTOR, NCBA KENYA PLC 2ND RESPONDENT

NCBA KENYA PLC 3RD RESPONDENT

RULING

1. The Administrator/applicant filed a Notice of Motion application dated 12th August 2020 pursuant to the provisions of Sections 3, 3A & 63 of the *Civil Procedure Act*, Order 5 Rule 22B & Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 576, 581, 584, 586 & 692 of the *Insolvency Act*, No. 18 of 2015, the Fourth Schedule to the *Insolvency Act*, and all enabling provisions of the law.
2. The applicant prays for orders that this Court finds the 1st respondent guilty of contempt of Court for violating Court Orders issued on 6th & 9th May 2019 that granted status quo in this matter, which were extended over time. The applicant prays for this Court to hold the respondents jointly and severally liable to refund Kshs.25,027,137.58 with 14% annual interest to the applicant, which sum was disbursed in breach of the Administration Order and during the status quo period. The applicant also prays for Summons to issue to the 1st respondent Mr. Jayesh Kotecha, and the 2nd respondent Mr.



John Gachoro, to show cause why their assets and the 3rd respondent's assets should not be seized or attached to recover the said amount, interest, and costs of the instant application.

3. 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. Ponangipalli Venkata Ramana Rao, the applicant herein. The applicant's case is that he was appointed as an Administrator of Midland Hauliers Ltd on 23rd April 2019 by Prime Bank Limited, a secured Creditor, and he filed the necessary statutory documents. That subsequently, notifications and instructions were sent to NIC Bank (now NCBA Bank) to freeze the Company's (Midlands Hauliers Ltd's) accounts. He averred that on 6th & 9th May 2019, the Court issued status quo orders restricting interference with the Company's administration, but the 1st respondent continued to transact on the Company's accounts. He contended that between April and October 2019, Kshs.33,242,144.78 was credited into the Company's accounts, of which Kshs.25,027,137.58 was unlawfully withdrawn leaving only Kshs.8,215,007.20 that was remitted to the administration account.
4. Mr. Rao averred that he engaged the 2nd & 3rd respondents in meetings and communication to recover the said funds, but no resolution was reached, which led to a demand letter dated 12th June 2020 being sent to the respondents, but they refused to refund the money, citing lapses in the administration and misinterpretation of the status quo orders. Mr. Rao contends that the 1st respondent is acting in contempt of Court and has breached the Insolvency Act by managing the Company's affairs during administration, whereas the 2nd & 3rd respondents are permitting unauthorized transactions.
5. In opposition to the application, Mr. Jayesh P. Kotecha the 1st respondent herein, and a Director of Midland Hauliers Limited (Under Administration) filed a replying affidavit sworn on 6th February 2023. He averred that in as much as the applicant accuses him of contempt of Court orders issued on 6th & 9th May 2019, granting status quo orders in this matter, he neither understands what "status quo" means nor its scope. He deposed that no clear guidance was provided on what actions were required or prohibited. He contended that the applicant neither attempted to seize assets nor enter the premises of Midland Hauliers Limited (Under Administration), and has also not identified specific actions or omissions that constitute contempt.
6. He asserted that he followed legal advice from their Advocate, Mogeni & Co. Advocates which stated that the applicant would not interfere with the Company's operations. He stated that the said advice coupled with no contradictory instructions, led to compliance in good faith. He stated that it is not clear how the sum of Kshs.25,027,137.58 was computed, thus hampering their ability to effectively respond to the instant application. Mr. Kotecha claimed that he has tried but failed to reconcile the applicant's alleged financial computations, noting discrepancies which include Hire Purchase loan repayments amounting to Kshs.1,365,874.87, credit card payments amounting to Kshs.7,554,736.39 for which NCBA Bank should provide an explanation. He asserted that the applicant has filed the application herein seeking to unlawfully lift the corporate veil of Midland Hauliers Limited (Under Administration), contrary to established legal principles laid down in the case of *Salomon v Salomon & Co.* [1897] A.C. 22.
7. The 2nd & 3rd respondents in opposition to the application herein filed a Notice of Preliminary Objection dated 20th February 2023, raising the following grounds –
 - i. The Honourable Court has no jurisdiction to entertain the application dated 18th August 2020 as presently instituted;
 - ii. The Insolvency Notice filed herein was spent upon lodgement as its purpose was merely to inform the Court of the appointment of the Administrator and is not a suit on the basis of



which parties can continue litigating or filing new or other applications seeking substantive orders;

- iii. There is no suit before this Honourable Court. The application is made in vacuo;
 - iv. The procedure adopted by the applicant is not meant and cannot be utilized to determine matters which involve complex questions of law;
 - v. The continued pendency of the present application is an abuse of the Court process and there is no competent suit before this Honourable Court; and
 - vi. The application dated 12th August 2020 is hopelessly incompetent, fatally defective and inadmissible and the same ought to be dismissed forthwith.
8. The 3rd respondent also filed a replying affidavit sworn on 23rd February 2023 by Mr. Stephen Atenya, the 3rd respondent's Principal Legal Counsel. He averred that the 3rd respondent was notified of the applicant's appointment on 29th April 2019 but only froze Midland Hauliers Limited's accounts on 13th May 2019, after confirming the applicant's appointment. He further averred that in as much as a Court Order for maintaining status quo was served on the 3rd respondent on 6th May 2019, the meaning of the said Order was ambiguous, hence its interpretation was sought through Court applications that were never resolved. He stated that the 3rd respondent's legal team advised the 3rd respondent that the status quo orders allowed continued operation of the accounts despite the administration.
9. Mr. Atenya stated that in February 2020 after communication delays and confirmation, the Bank transferred Kshs.8,215,007.20 from Midland Hauliers Limited's accounts to the applicant and provided the applicant with account statements of Midland Hauliers Limited. He denied that the 3rd respondent misappropriated Kshs.25,027,137.58 as alleged by the applicant. He contended that the applicant's initial term ended on 24th April 2020 and was only extended retrospectively on 28th May 2020 for 21 days, lapsing on 18th June 2020. He stated that for the said reason, the applicant lacked proper legal standing to act, including filing the affidavit supporting the instant application. Mr. Atenya asserted that the 3rd respondent cannot be held personally liable as it followed due process.
10. The instant application was canvassed by way of written submissions. The applicant's submissions were filed by the law firm of Macharia–Mwangi & Njeru Advocates on 20th July 2023, while the 2nd & 3rd respondents' submissions were filed by the law firm of Nyaanga & Mugisha Advocates on 20th September 2023. As at 31st October 2024 when the application herein was being reserved for Ruling, the 1st respondent had not filed his written submissions.
11. Mr. Elijah Mwangi, learned Counsel for the applicant relied on the case of I & M Bank Limited v ABC Bank Limited & another [2021] eKLR, and submitted that under Section 537 of the [Insolvency Act](#), qualifying floating charge holders must notify the Court of an Administrator's appointment via an Insolvency Notice. He stated that for judicial efficiency and to prevent fragmentation, all matters related to the Company's administration should be handled by the same Court that received the Insolvency Notice. Relying on the case of Lambert Lwanga Ogochi & others v Ponangipalli Venkata Ramana Rao & 2 others [2022] eKLR, he emphasized that dismissing the application on technical grounds would undermine the [Insolvency Act](#) and [the Constitution](#), as the application raises significant issues. He expressed the view that the application has caused no prejudice to the respondents.
12. Counsel cited the case of Samuel M. N. Mweru & others v National Land Commission & 2 others [2020] eKLR, and submitted that that under Sections 537 and 538 of the [Insolvency Act](#), the appointment of an Administrator by a qualifying floating charge holder becomes effective upon the filing of the required Notice and supporting documents with the Court. He stated that in



- this case, the Administrator's appointment took effect on 24th April 2019, upon proper filing of the Insolvency Notice. He submitted that under Sections 581 and 584 of the *Insolvency Act*, the Company's management functions and control of its assets automatically vested in the Administrator, rendering them unavailable for the 1st respondent's dealings.
13. Mr. Elijah Mwangi referred to the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, and stated that the status quo orders issued on 6th & 9th May 2019 did not suspend or lift the Administrator's appointment or the administration itself.
 14. He supported the above argument by stating that by then, the administration was already in effect, and the Administrator had called for the freezing of the Company's accounts. He asserted that the Orders served to preserve the administration while restricting the Administrator from actively exercising his duties. He submitted that under Section 584 of the *Insolvency Act*, the Company's assets, including funds in its accounts, remained under the Administrator's control, leaving the 1st respondent without authority to manage or deal with them. Mr. Elijah Mwangi referred to the Court of Appeal case of *Uboru Housing Co-operative Society Ltd v Tripple Two Properties Ltd & 7 others* [2023] KECA 675 (KLR), and argued that knowledge of Court orders by a litigant's Advocate is sufficient to warrant a finding of contempt against the litigant.
 15. He stated that the 1st respondent withdrew Kshs.25,027,137.68 from the Company's bank account between 25th April and 28th October 2019, during the administration period and while status quo orders were in effect, despite being fully aware of the administration and the Court's directives, thereby acting in deliberate and bad-faith breach of the Court Orders. Counsel urged this Court to find the 1st respondent in willful contempt and to impose appropriate sanctions. In citing the case of *Director of Public Prosecutions v Attorney General & 12 others* [2022] KECA 397 (KLR), he submitted that Company officers are personally liable for the Company's actions as they represent the Company's mind and soul. He stated that the 3rd respondent failed to freeze the Company's accounts despite receiving the Administrator's letters on 24th April 2019 and 6th May 2019 hence the Company lost Kshs.25,027,137.68.
 16. Mr. Elijah Mwangi contended that while the 2nd & 3rd respondents were not parties to the status quo order application, they were aware of its existence and the Company's administration, thus allowing unauthorized debits during this period contributed to the 1st respondent's contempt of the Court's Orders. Counsel contended that while the 2nd & 3rd respondents misinterpreted the status quo order as allowing the Company's accounts to be operated, their actions should not negatively impact the Company or its creditors. He cited the case of *Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and planning & 3 others* [2017] eKLR, and asserted that the applicant has presented a strong case for the Court to direct the respondents to jointly and severally reimburse the Kshs. 25,027,137.58 withdrawn from the Company's account during the administration and status quo orders period. He urged this Court to summon the 1st & 2nd respondents to appear in Court to show cause why the claimed sum should not be recovered from their personal assets.
 17. Mr. Mugisha, learned Counsel for the 2nd & 3rd respondents cited the Court of appeal case of *Agnes Nyambura Munga v Lita Violet Shepard* Civil Appeal No. 334 of 2013 and submitted that the instant application was filed in an Insolvency Notice, intended solely to inform the Court of the Administrator's appointment, and was thus spent upon lodgement. He stated that the applicant ought to have initiated substantive proceedings to seek interim reliefs pending the resolution of the dispute since in the absence of such a claim, any interim orders issued by the Court lack a legal foundation. He argued that the procedure used by the applicant is unsuitable for resolving substantive, complex legal questions such as the ones arising from his application, that require oral testimony.



18. He referred to Sections 593 & 594 of the *Insolvency Act* and the Court of Appeal case of Alfred Njau & 5 others v City Council of Nairobi [1983] eKLR, and stated that the applicant herein lacks the requisite locus standi to act as the Administrator of Midland Hauliers Limited or to continue with these proceedings, since his initial term as the Company's Administrator elapsed on 24th April 2020, and no valid extension was obtained within the legally prescribed timeframe. He contended that although a retrospective Order was secured on 29th May 2020, it extended the term by only 21 days, which expired on 18th June 2020. Counsel contended that any actions taken by the applicant after the elapse of his term, including filing of the instant application are invalid. Mr. Mugisha relied on the provisions of Section 537 of the *Insolvency Act* and submitted that in as much as the applicant served the 2nd respondent with his letter of appointment, he did not provide the 2nd & 3rd respondents with the necessary documents to confirm his appointment.
19. He submitted that on 25th April 2019, the 3rd respondent wrote to the applicant advising him that it would freeze the Company's accounts after confirming the appointment. Counsel argued that the 3rd respondent was only able to confirm the applicant's appointment on 10th May 2019, and thereafter froze the Company's accounts on 13th May 2019. He asserted that the 3rd respondent cannot be faulted for allowing transactions during this time.
20. Mr. Mugisha submitted that in as much as the 3rd respondent acknowledges receipt of the status quo orders issued on 6th May 2019, the said Order was ambiguous and undefined, prompting the 1st respondent to seek the Court's interpretation of the same vide an application dated 27th May 2019. He stated that the 2nd & 3rd respondents were never served with an interpretation of the said Order hence they relied on their legal team's interpretation, which concluded that the Company's bank accounts could continue to operate despite the administration.
21. Counsel relied on the Supreme Court case of Bia Tosha Distributors Limited v Kenya Breweries Limited & 6 others (Petition 15 of 2020) [2023] KESC 14 (KLR), and asserted that the status quo order was ambiguous, allowing for multiple interpretations. He stated that the 2nd & 3rd respondents cannot be faulted for their interpretation, or be accused of contempt of Court. He submitted that the 2nd & 3rd respondents acted in compliance with the *Insolvency Act*, by conducting due diligence before freezing the Company's accounts.
22. Referring to the Court of Appeal case of P. K. Langat & Andrew A. Mondoh v Raphael M. A. Juma [2001] eKLR, he argued that the 2nd respondent as an agent of the 3rd respondent, cannot be held personally liable for reimbursement of the claimed amount. Furthermore, he stated that the applicant failed to establish a case warranting the Court to compel the 2nd respondent to show cause why the claimed amount should not be recovered from his personal assets.

Analysis and Determination.

23. I have considered the application filed herein, the grounds on the face of it and the affidavit filed in support thereof. I have also considered the replying affidavit filed by the 1st & 3rd respondents and the Notice of Preliminary Objection filed by the 2nd & 3rd respondents, together with the written submissions by Counsel for the applicant, and Counsel the 2nd & 3rd respondents. The issues that arise for determination are-
 - i. Whether the 2nd & 3rd respondents Notice of Preliminary Objection should be upheld;
 - ii. Whether the applicant has the requisite locus standi to prosecute the instant application;



- iii. Whether the 1st respondent is in contempt of status quo orders issued by the Court on 6th & 9th May 2019; and
- iv. Whether the respondents are liable to refund to the applicant Kshs.25,027,137.58.

Whether the 2nd & 3rd respondents Notice of Preliminary Objection should be upheld.

24. The validity of a Preliminary Objection was discussed by the Court in John Musakali v Speaker County of Bungoma & 4 others [2015] eKLR, as hereunder –

... The position in law is that a Preliminary Objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the Preliminary Objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable Preliminary Objection on a point of law...

25. In order for a Preliminary Objection to succeed, it should raise a pure point of law, it should be argued on the assumption that all the facts pleaded by the other side are correct, and it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The 2nd & 3rd respondents challenged the instant application on grounds that it was improperly filed under an Insolvency Notice, which serves only to inform the Court of an Administrator's appointment but does not serve as a suit for litigating substantive reliefs. The applicant on the other hand emphasized on judicial efficiency and the need to consolidate all matters related to the Company's administration before the same Court.

26. At this juncture, I am minded to reproduce the provisions of Section 696 of the *Insolvency Act* which states that –

1. A proceeding under this Act may not be invalidated or set aside for a defect in a step that is required to be taken as part of, or in connection with, the proceeding, unless a person is detrimentally affected by the defect.
2. The Court may Order the defect to be corrected, and may Order the proceeding to continue, on such terms as it considers appropriate in the interests of everyone who has an interest in the proceeding.
3. In this section, "defect" includes a misdescription, misnomer or omission.

27. The import of the above provisions is that legal proceedings under the *Insolvency Act* cannot be dismissed/struck out solely due to a defect unless it is shown that allowing the proceedings to continue would cause prejudice to a litigant. Additionally, this Court is enjoined by Article 159(2)(d) of *the Constitution* of Kenya to determine disputes brought before it without undue regard to procedural technicalities.

28. In this case, other than assert that the instant application has been filed in vacuo, the 2nd & 3rd respondents have not demonstrated what prejudice they stand to suffer in the event that the instant application is determined as filed. In any event, the application herein was filed way back in the year 2020, and the parties herein have been able to present their cases by filing their respective affidavits. The said parties have also been able to file written submissions in support of, or in opposition to the application herein, save for the 1st respondent who was given an opportunity to file his written submissions but failed to do so. Further, it is evident from the record that none of the parties herein



made an application for filing of further affidavits and/or cross-examination of deponents who swore their respective affidavits.

29. It is my finding that it is in the interest of justice to determine the instant application as filed, to avoid a waste of the Court's precious time and resources, and to keep at bay the increase of costs associated with filing of documents afresh bearing in mind that costs have already been incurred by the parties in prosecuting it.
30. I am therefore not inclined to strike out the application herein for being filed under an Insolvency Notice. Consequently, the 2nd & 3rd respondents' Preliminary Objection is hereby dismissed with costs to the applicant.

Whether the applicant has the requisite locus standi to prosecute the instant application.

31. The 2nd & 3rd respondents assert that the applicant lacks the requisite locus standi to either file or prosecute the application herein since his initial term as the Company's Administrator elapsed on 24th April 2020, and that no valid extension was obtained within the required timeframes. They averred that the retrospective Order issued on 29th May 2020 extended the term by only 21 days, which elapsed on 18th June 2020, hence any actions taken by the applicant after that date, including the filing of the current application, are invalid.
32. On perusal of the Court record, it is evident that the Administrator's term was extended periodically. Before it elapsed on 18th June 2020, it was extended on 16th June 2020, with further directions on 21st July 2020 confirming the term's continuation. This means that as at the time of filing the instant application, the applicant was still legally and validly an Administrator of Midland Hauliers Limited (Under Administration), giving him the requisite locus standi to file the application herein. The most recent extension of the Company's Administrator was granted by this Court on 11th November 2024, for a further period of three (3) months with effect from 11th November 2024, vide an Order issued by this Court on the said date.
33. I therefore find that the applicant had the requisite locus standi to file the application herein, and has the locus standi to prosecute the instant application.

Whether the 1st respondent is in contempt of status quo orders issued by the Court on 6th & 9th May 2019.

34. The Black's Law Dictionary 9th Edition, defines contempt as -

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a Court or legislature. Because such conduct interferes with the administration of justice.

35. Contempt of Court is that conduct or action that defies or disrespects authority of the Court. In the case of *Katsuri Limited v Kapurchand Depor Shah* [2016] eKLR, while citing the case of *Kristen Carla Burchell v Barry Grant Burchell* (Eastern Cape Division case No 364 of 2005, the Court held as follows-

...in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove (ii) the terms of the Order, knowledge of the terms by the respondent, (iii) failure by the respondent to comply with the terms of the Order.

36. It is not in contest that the Administrator's appointment took effect on 24th April 2019, and thereafter the Court issued status quo orders on 6th & 9th May 2019. The applicant argues that the said Orders preserved the administration while restricting the Administrator's active duties, and that despite



being aware of the said Orders, the 1st respondent withdrew Kshs.25,027,137.68 from the Company's account between 25th April 2019 and 28th October 2019, during the administration period, thereby acting in willful contempt of the Court's Orders.

37. The respondents on the other hand argued that they did not understand the meaning and/or effect of the status quo orders, thus the 1st respondent's Counsel approached the Court vide an application dated 27th May 2019, which application was never resolved. He explained that for that reason, and in the absence of any other interpretation of the said Orders, the respondents relied on their Advocate's legal advice who interpreted the status quo orders as allowing the Company's accounts to be operated.
38. It is evident from the record that other than issue an Order for maintaining status quo, the Court did not go further and explain what "status" ought to have been maintained. It is for this reason that I agree with Counsel for the 2nd & 3rd respondents that the said Order was left to the interpretation of the parties. The Supreme Court in the case of *Bia Tosha Distributors Limited v Kenya Breweries Limited & 6 others* (supra), addressed itself on the effect of "status quo orders" as follows -

Courts should be careful when issuing conservatory and other interim relief to parties. While it was well intended to preserve the substratum of the case by way of status quo Orders, sight should never be lost of the fact that parties appearing before Courts for such urgent relief were always at the height of their contest. If indeed the Courts had to use the term status quo, it was only practical that the same be accompanied by the descriptive particulars of the exact position that the Court seeks to preserve. That would avoid situations like the instant case where each party was left to its own perception as to what the Court meant. That ultimately eroded the very essence of Court intervention and subjected the Court to undesirable controversy regarding compliance with the said Order.

An Order to maintain the status quo could mean anything, everything and nothing. Unless it was clearly spelt out in precise and unambiguous terms what the status at a particular point in time was, it was a recipe for frustration and embarrassment for the Court to simply Order, without more, that the status quo be maintained. Such vague and imprecise Orders served only to embolden individuals so-minded to do that which was intended to be prohibited or injuncted secure that they could escape because status quo was never spelt out clearly.

39. In this instance, in the absence of any explanation and/or the descriptive particulars of the "status" that the Court sought to preserve when issuing the status quo orders of 6th & 9th May 2019, the respondents cannot be blamed for their interpretation of the said Orders in the manner they did. They cannot be accused of being in contempt of Court.
40. In the case of *Sheila Cassatt Issenberg & Watoto World Centre v Antony Machatha Kinyanjui* [2021] KEHC 5692 (KLR), the Court when dismissing an application for contempt of Court orders relied on the finding of Cromwell J., and stated that –

Cromwell J, writing for the Supreme of Canada in *Carey v Laiken*, 2015 SCC 17 (16th April 2015), expounded on the three elements of civil contempt of Court which must be established to the satisfaction of the Court, thus:

- i. The Order alleged to have been breached "must state clearly and unequivocally what should and should not be done." This ensures that a party will not be found in contempt where an Order is unclear. An Order may be found to be unclear if, for example, it is missing an essential detail about where, when



or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.

- ii. The party alleged to have breached the Order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.
- iii. The party alleged to be in breach must have intentionally done the act that the Order prohibits or intentionally failed to do the act that the Order compels. (Emphasis added).

41. As a result of the authorities I have referred to, and the circumstances of this case, I am not persuaded that the 1st respondent is in contempt of the status quo orders issued by the Court on 6th & 9th May 2019, which is reinforced by the attempt the 1st respondent made to have the said orders interpreted by the Court, but his application was never determined.

Whether the respondents are liable to refund to the applicant Kshs.25,027,137.58.

42. The applicant was appointed as the Administrator of Midland Hauliers Limited on 23rd April 2019, by Prime Bank Limited and filed the necessary statutory documents. Thereafter, on 25th April 2019, the 3rd respondent was served with a letter notifying it of the applicant's appointment and it was instructed to freeze the Company's accounts. The 3rd respondent contended that via email, it responded to the said letter stating that the freeze would only be implemented after confirming the applicant's appointment, as not all required documents under Section 537 of the *Insolvency Act* were provided.
43. It is however worthy of note that the said email communication was not produced by the 3rd respondent for this Court to have a look at, and verify its correctness, if it actually exists, and that it was indeed sent to the applicant. Failure to produce the same is contrary to the provisions of Sections 107, 108 & 109 of the *Evidence Act* which provides that he who alleges must prove. The above notwithstanding, upon receiving the letter appointing the applicant as the Administrator of Midland Hauliers Ltd, and upon receiving instructions to freeze the Company's accounts, the 3rd respondent should have first halted transactions, especially withdrawals or closures, before verifying the Administrator's appointment. This would have balanced the competing interests of the Company and its creditors.
44. The 3rd respondent however allowed the 1st respondent to continue withdrawing funds while awaiting verification of the Administrator's appointment, which demonstrates bias, as it posed a significant risk to the administration process. By the time verification was completed, the 1st respondent had withdrawn Kshs.25,027,137.58 leaving only Kshs.8,215,007.20 in the bank account, which was later remitted to the administration account.
45. The applicant prays for this Court to find the three (3) respondents liable, and order a refund of the sum of Kshs.25,027,137.58. This Court however notes that the 2nd respondent as the Managing Director of the 3rd respondent cannot be held personally liable for actions or omissions performed in the course of his official duties on behalf of the 3rd respondent. This position was enunciated by the Court in the case of *Salomon Co. Ltd v Salomon* [1897] AC 78, where the Court addressed itself on the doctrine of corporate personality and held that a Company is in law a separate person from its members.
46. Ultimately, it is my finding that it is only the 1st and 3rd respondents who are liable to refund to the applicant Kshs.25,027,137.58. I am persuaded that the applicant has made out a case to warrant this



Court to summon the 1st and 2nd respondents to show cause why the claimed sum should not be recovered from the 1st & 3rd respondents' assets.

47. The upshot is that the application herein is partly successful and it is allowed in the following terms -
- i. This Court hereby finds that the 1st & 3rd respondents are jointly and severally liable to refund Kshs.25,027,137.58 along with 14% annual interest to the applicant;
 - ii. The 1st and 3rd respondents are given 30 days to reimburse the said amount to the applicant herein, the Administrator of Midland Hauliers Ltd (under Administration);
 - iii. Failure to comply with Order (iii) above will lead to summons being issued to the 1st and 2nd respondents to show cause why the amount of Kshs.25,027,137.58 should not be recovered from the assets of the 1st & 3rd respondents; and
 - iv. Costs of the instant application shall be borne by the 1st & 3rd respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4TH DAY OF APRIL 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Kimani h/b for Mr Elijah Mwangi for the Administrator/applicant

No appearance for the 1st respondent

Mr. Gekonge h/b for Mr. Nyaanga for the 2nd & 3rd respondents

Ms B. Wokabi - Court Assistant.

