



REPUBLIC OF KENYA



KENYA LAW
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**In re Invesco Assurance Company Limited (Under Statutory Management)
(Insolvency Petition E155 of 2019 & E087 of 2024 (Consolidated))
[2025] KEHC 12659 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E155 OF 2019 & E087 OF 2024 (CONSOLIDATED)**

F GIKONYO, J

JULY 31, 2025

**IN THE MATTER OF INVESCO ASSURANCE COMPANY
LIMITED (UNDER STATUTORY MANAGEMENT)**

AND

IN THE MATTER OF THE COMPANIES ACT, 2015

AND

IN THE MATTER OF THE INSOLVENCY ACT, 2015

AND

**AND IN THE MATTER OF THE INSURANCE
ACT, CHAPTER 487 OF THE LAWS OF KENYA**

RULING

1. The Commissioner for Insurance filed the notice of motion dated 20th December 2024, seeking the appointment of either Diana Nduku Mumo, Etemesi Elfes Oniang'o or Kolluri Venkata Subbaraya Kama Sastry as provisional liquidator of Invesco Assurance Company Limited (Under Statutory Management), pending hearing and determination of its petition to liquidate the company.
2. The application is brought under Sections 1A, 1B and 3A of the *Civil Procedure Rules*, Sections 425 and 437 of the *Insolvency Act* and Sections 67 and 123 of the *Insurance Act*.
3. The application is premised on the grounds set out on its face, the annexed affidavit sworn by the Commissioner and written submissions dated 30th May 2025. In summary, the grounds are that:-
 1. Over the years, the Insurer has experienced challenges complying with capital adequacy requirement, leading to intervention, including capital injection attempts to secure solvency and operations.



2. Upon failure of the attempts, on 14th August 2024, the Insurer was placed under statutory management for 6 months.
 3. The statutory manager found that the Capital Adequacy Ratio of the Insurer as of 31st December 2023 was -1249%, below the mandatory minimum capital adequacy ratio of 100%.
 4. The capital is not adequate to meet its statutory, financial and legal obligations as required under the [Insurance Act](#) and in the Report, the statutory manager recommended that the insurer be liquidated.
 5. The Insurer has contravened Sections 41, 47(1), 197A, 197B and 203 of the [Insurance Act](#).
 6. There is an urgent need to appoint an interim liquidator for preservation and management of the insurer's assets pending final determination of the liquidation petition.
 7. If the interim orders are not granted, the policyholders and other creditors of Invesco Assurance Company Limited (under Statutory Management) will suffer irreparable harm and damage due to the delayed settlement of their claims.
4. The Commissioner submitted that it has made out a case for provisional liquidation. That Respondent is insolvent and cannot continue in business as a going concern. That the statutory management period having ended with a determination of insolvency the next best course to protect the interests of Policyholders is liquidation.
 5. The Commissioner relied on:-
 1. [Leisure Lodges Limited v Yasvin A. Shretta](#) [1997] KECA 268 (KLR)
 2. [Nakumatt Holdings Limited](#) [2017] eKLR
 3. [Re Ufanisi Capital & Credit Limited](#) [2016] eKLR
 4. [In re Hoggers Limited \(In Administration\)](#) (Petition E003 of 2021) [2021] KEHC 117 (KLR) (Commercial and Tax) (7 October 2021) (Ruling)

Responses

Shareholders

6. In opposition to the application, the shareholders filed a replying affidavit and a further affidavit sworn by Albert Karakacha Muharani on 3rd February 2025 and 21st February 2025. They also filed written submissions dated 13th June 2025.
7. The deponent highlighted the steps taken to revive the company and to inject capital. It was also deposed that there have been several unjustified attempts by the Commissioner to close down the Insurer. That the Commissioner had attempted to close the Insurer through a letter dated 24th February 2023, in violation of the court order by Justice Mabeya on 14th December 2022. The Commissioner was summoned to court, purged his contempt and withdrew his letter dated 24th February 2023.
8. The shareholders contended that the Commissioner has not shown that the Insurer is unable to pay its debts as per Section 384(1) of the [Insolvency Act](#). That the liquidation would be against the shareholders' interests and constitutional rights.
9. The shareholders urged the court not to admit the statutory manager's report as it is unsigned. It relied on:-



1. [George Kimani Njuki v National Lands Commission and 2 others](#) [2022] eKLR
2. [Dickson Ngigi Ngugi v Morrison Njenga Waweru](#) [1979] eKLR

Opposing Creditor

10. Kinyanjui Theuri & Co. Advocates filed a replying affidavit sworn by Kinyanjui Theuri on 22nd May 2025. He cited robust steps taken by the insurer to redeem its operations and assist with outstanding claims. He mentioned that the insurer is among only 3 current insurers offering Public Service Vehicle (PSV) covers to the public. That therefore, if the insurer is allowed to collapse it shall affect the entire industry and negatively impact the general insuring public, the public transport sector. That it is in the public interest and greater public good for the insurer to continue with operations. That the Insurer owes the creditor a substantial amount which it has been making regular and reasonable instalment payments.
11. It also filed the notice of motion dated 28th February 2025 seeking to be joined in the matter as an interested party and 21 days to respond to the application. Through the annexed affidavit, he deposed that he is a creditor in IP 155 of 2019 and stands to be directly affected by the orders issued. That if he is not joined, he stands to suffer irreparable loss.
12. In response, the Commissioner filed a grounds of opposition dated 18th February 2025, contending, in the main, that Mr. Kinyanjui has not satisfied the legal threshold to be joined as a party.

Policyholders

13. The policyholders, Public Service Vehicle Owners under the Umoiner, Starbus Kenya an OMA Services 'South C' SACCOs, filed the notice of motion dated 5th February 2025, seeking interim orders reviving the Insurer pending hearing and determination of the application. The application is supported by the grounds on its face and the affidavit sworn by Peter Njuguna Njathi.
14. The policyholders oppose the Commissioner's application because it jeopardises the chances of revival of the Insurer. According to them, the Insurer needs to be resuscitated to enable it to pay its debtors who are experiencing losses since the policyholders' compensation fund issued a public notice to close the company.
15. The policyholders believe that the company has since seen hopes of revival and needs conditional reopening. It pointed out that while the Commissioner's application is grounded on a deficient capital adequacy ratio, this contradicts the actuarial report prepared by Zamara Actuaries, which states that the company is capable of payment of its outstanding claims.
16. Through the application, the policyholders also seek a conservatory order through an injunction to prohibit the Commissioner from continuing to place the Insurer under statutory management, leading to execution levied in suits against its members/ policyholders in proceedings where the Insurer has expressly assumed liability to defend all claims.
17. They further seek that the pendency of proceedings be advertised by the Insurance Regulatory Authority not later than 3 days of making of any order.
18. The supporting grounds are that the Insurer stands liable to settle third party injury claims. That despite paying for insurance, the policyholders have been met with increasing dishonour of the arising decrees, judgments and commitments to settle the subrogated claims. That they have been exposed to unwarranted, unfair and oppressive execution processes adverse and to the detriment of their personal



liabilities. That therefore, the balance of convenience tilts in favour of granting the conservatory orders sought.

19. The policyholders also challenge the Commissioner's application made under sections 425 and 437 of the *Insolvency Act*. They highlighted that they filed Constitutional Application No. E618 of 2024 seeking interpretation on the law to ascertain the proper and applicable law when considering insolvency or winding up of insurance companies.
20. The Commissioner opposed the application through the grounds of opposition dated 18th February 2025, citing failure to seek leave for joinder; lack of locus standi; the matters raised under consideration in Machakos HCCRPET/E019/2024 and Milimani HCCHRPET/E618/2024 and are therefore replicative, *sub judice* and an abuse of the process of the court.
21. The Commissioner's position is that the prayers have been overtaken as the statutory manager has concluded his mandate and duly submitted a final report recommending liquidation. The report has been adopted and endorsed by the Authority's Board. The prayer for revival of the Insurer poses significant risks to policyholders, creditors and the general public. Hence, the application ought to be dismissed with costs.

Analysis and Determination

22. The issues before the court are:-
 1. Whether the opposing creditor should be joined as an interested party.
 2. Whether the Commissioner has made out a case for the appointment of a provisional liquidator pending the hearing of the liquidation petition.
23. On the first issue, I note that the opposing creditor, Kinyanjui Theuri & Co. Advocates, is the petitioner in IP 155 of 2019. He seeks to be joined as a party in this matter.
24. As a creditor of the company, the firm is a necessary and proper party to the petition. It can either support or oppose the petition. *In Re Kipsigis Stores Limited* [2017] eKLR
25. Therefore, the application is merited.
26. The next question is whether the Commissioner has made out a case for the appointment of a provisional liquidator pending the hearing of the liquidation petition.
27. The application for liquidation has been filed by the Commissioner of Insurance under Sections 425 and 437 of the *Insolvency Act* and Sections 67 and 123 of the *Insurance Act*.
28. Section 123 of the *Insurance Act* provides that:-

“The Commissioner may, with the prior approval of the Board, make an application to the court for the liquidation of the insurer in accordance with part IV of the *Insolvency Act*, for among others, failure to comply with part VI (section 67).”
29. Section 437 of the *Insolvency Act* provides: -

“(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.”



30. In *Leisure Lodges Limited v Yashvin A. Shretta* [supra], Justice Tunoi, cited the following excerpt from *Pennington's Company Law*, 4th Edition, at Page 867:-
- “It has been said that a provisional liquidator will only be appointed if the company is the petitioner or if it consents to the appointment, or if the company is clearly insolvent, or if it is obvious to the court that a winding up order will be made. These dicta show the court's reluctance to pre-judge the issue between the petitioner and the company by appointing a provisional liquidator before the hearing of the petition, but it has also been held that the court's power to appoint a provisional liquidator is not limited to such cases, and may be exercised if there is an interest of the public to be protected...”
31. The Commissioner hinged its case on the final report of the statutory manager of October 2024, which indicates that the Insurer fell below the capital adequacy ratio required of an insurance company. The statutory manager also indicated that the insurer is insolvent to the tune of Kshs. 8.096,107,000/-.
32. The opposing parties argued that the statutory manager's report was contradictory to the report by Zamara Actuaries, which states otherwise. They also argued that the appointment of a provisional liquidator will hamper the efforts made to revive the company. They further contended that the insurer is not insolvent as per section 384 of the *Insolvency Act*.
33. However, Section 121 of the *Insurance Act* provides that:-
- “For the purpose of section 384 of the *Insolvency Act*, an insurer is taken to be unable to pay its debts if at any time the requirements of section 41(which relate to margins of solvency) are not observed by the insurer.”
34. From the evidence presented the Commissioner has demonstrated that the Insurer has been in distress for a long period of time, leading to its placement under statutory management under section 67 (c). Under the said provision, the responsibility of the statutory manager includes evaluating the solvency and liquidity of the insurer. It also includes the assessment of insurer's compliance with the provisions of the *Insurance Act*.
35. The statutory manager indicated that it is not convinced of the viability of the proposals for the revival of the company by the shareholders.
36. These matters will be considered in depth during the hearing of the petition.
37. Importantly, the subject company is an insurer and the liquidation application is of great public interest. An insurer is custodian of public trust not a mere commercial enterprise. It holds premiums and provides financial security to thousands. Its solvency and adherence to the regulatory and legal requirements is paramount.
38. The evidence presented shows prima facie that the insurer is insolvent and is in contravention of regulatory requirements especially the capital adequacy ratios. Adherence with the requirements of the law by the insurer is a necessary safeguard of public interest in the insuring public. Therefore, I do not think that the Commissioner's concerns for the interest of policyholders are idle.
39. The Commissioner also demonstrated that the insurer has various categories of assets including land in Kwale, and other assets in the various branches across the country, itemised in the Report by the statutory manager. It argued that the assets are at risk of waste if not substantially protected by this court through an order of provisional liquidation.



40. Therefore, I find that the Commissioner has met the legal threshold for the appointment of a provisional liquidator pending the hearing of the liquidation petition.
41. Accordingly, I make the following orders
1. The application dated 22nd May 2025 is allowed.
 2. The Commissioner's application dated 20th December 2024 is allowed in the following terms:-
 3. Diana Nduku Mumo is hereby appointed as provisional liquidator of Invesco Assurance Company Limited pending the hearing and determination of the liquidation petition;
 4. The provisional liquidator is directed to serve this application and petition together with any consequent order upon creditors by substituted service through advertisement in the Kenya Gazette and a newspaper of nationwide circulation.
 5. The application for revival of the company will be heard and considered alongside the liquidation petition.
 6. The costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 31ST DAY OF JULY 2025.

F. GIKONYO M
JUDGE

In the presence of: -

1. Otieno for creditor Kinyanjui Njuguna
2. Ligami for Petitioner in IP E087 and 2nd Respondent in IP E155
3. Koimburi for Kibet for Invesco
4. No appearance by any other party
5. CA - Kinyua

