Kenindia Assurance Co Ltd v Administrator, Nakumatt Holdings Ltd (UA) & another (Civil Suit E029 of 2018) [2025] KEHC 12545 (KLR) (Commercial and Tax) (9 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12545 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

CIVIL SUIT E029 OF 2018

RC RUTTO, J

SEPTEMBER 9, 2025

BETWEEN

KENINDIA ASSURANCE CO LTD ..... PLAINTIFF

AND

THE ADMINISTRATOR, NAKUMATT HOLDINGS LTD (UA) .... 1ST DEFENDANT

NAKUMATT HOLDINGS LTD (UA) ..... 2ND DEFENDANT

JUDGMENT

1. By a plaint dated 4th June 2018, the Plaintiff instituted proceedings against the Defendants seeking the following reliefs;
    a. An injunction to prevent the 1st Defendant from commencing liquidation proceedings against the Plaintiff.
    b. A declaration that the Plaintiff is not indebted to the defendants in the sum of Kshs.181,344,573/= or any other sum.
    c. A declaration that the Plaintiff is entitled to set off any moneys payable under insurance claims against any debts due to the Plaintiff from the 2nd Defendant.
    d. Costs.
2. The Plaintiff alleges that, prior to the appointment of the 1st defendant as an Administrator, it had three distinct business relationships or transactions with the 2nd Defendant. First, the Plaintiff had insured several risks on behalf of the 2nd Defendant, for which it had issued insurance policies, and premiums were outstanding. There were also certain claims made by the 2nd Defendant under those policies which

were under consideration. Second, the 2nd Defendant was a tenant in premises owned by the Plaintiff, namely Eldoret Municipality Block 7/95, and the rent under the lease was in arrears. Third, the 2nd Defendant had borrowed monies from the Plaintiff, for which it had issued a commercial paper.

3. The Plaintiff avers that by a letter dated 12th February 2018, the 1st Defendant notified it of his appointment as Administrator and requested details of any payments due under the insurance policies issued by the Plaintiff, any debits in respect of those policies, and any other relevant matters. The Plaintiff states that it responded through its advocates, providing: (i) a list of policies, active as at 22nd January 2018; (ii) a schedule showing outstanding premiums of Kshs.87,807,299/=; (iii) a schedule of discharge vouchers received from the 2nd Defendant for processing; and (iv) a schedule of monies due from the 2nd Defendant to the Plaintiff, comprising Kshs.165,614,246.58/= in respect of commercial paper and Kshs.19,279,885.99/= for rent on the Eldoret premises. The Plaintiff further avers that it notified the 1st Defendant, through the 2nd Defendant's insurance broker, that monies due to the 2nd Defendant under the insurance policies would be set off against the amounts owed on the commercial paper.

4. The Plaintiff states that by a letter dated 28th February 2018, the 1st Defendant demanded payment of the claims and objected to the set-off against other debts. In response, the Plaintiff, by a letter dated 7th March 2018, asserted that no monies were owed to either Defendant, and that, infact, the 2nd Defendant was indebted to the it. The Plaintiff adds that the 1st Defendant convened a creditors' meeting for 14th March 2018 and, in preparation, it lodged a proof of debt on 12th March 2018 indicating that the 2nd Defendant owed it Kshs.87,807,299/= in outstanding premiums, Kshs.19,279,885.99/= in rent arrears, and Kshs.165,614,246.58/= under the commercial paper. It is further averred that on 19th March 2018, the 1st Defendant forwarded additional discharge vouchers, requested payment, and demanded reversal of amounts credited to the commercial paper account. A follow up letter dated 29th March 2018, acknowledged the Plaintiff's right to offset premiums but disputed the set-offs against other debts. The Plaintiff further avers that, by a letter dated 11th April 2018, the 1st Defendant demanded reversal of the set-offs and payment of Kshs.33,589,452/=. In response, the Plaintiff, through its counsel, maintained that the set off against the 2nd Defendant's debts were valid and could not be reversed.

5. The Plaintiff aver that on 16th May 2018, it received a statutory demand issued under Section 384 of the *Insolvency Act* and requiring payment of Kshs.181,344,573/= within 21 days failing which liquidation proceeding would be initiated. In its response dated 23rd May 2018, the Plaintiff outlined the history of the correspondence and asserted its financial stability, citing net assets of Kshs.3,127,559,000/- and as 31st December 2016 and Kshs.3,694,286,000/= as at 31st December 2017 and it is therefore not insolvent. The Plaintiff expressed apprehension that the 1st Defendant would proceed with liquidation against it and publicize the proceedings causing irreparable harm to its reputation and business.

6. In their Statement of Defence dated 6th December 2018, the Defendants aver that, prior to the appointment of the 1st Defendant as Administrator of the 2nd Defendant, the latter had three distinct business relationships with the Plaintiff:

   (i) as an insured, having taken out various insurance policies from the Plaintiff;

   (ii) as a tenant in the Plaintiff's premises at Eldoret Municipality Block 7/95; and

   (iii) as a borrower, having issued commercial paper to the Plaintiff in respect of monies borrowed.

   The Defendants state that, upon his appointment on 22nd January 2018, the 1st Defendant assumed its statutory duties as mandated by law. Further he avers that by a letter dated 12th February 2018, the

1st Defendant wrote to the Plaintiff's Managing Director requesting: a detailed schedule of the policies in place at the time of his appointment; a report of any pending claims; a calculation of any return premiums due to the 2nd Defendant accompanied by a settlement cheque; and a statement of account showing any debits due to the Plaintiff. By a letter dated 28th February 2018, the Plaintiff is said to have responded, providing:

(i) a list of active policies as at 22nd January 2018;

(ii) a schedule of outstanding premiums amounting to Kshs.57,807,244/=;

(iii) a schedule of discharge vouchers received for processing, with a note indicating its intention to comply with the Insurance Regulatory Authority's directive that payments for fatal injuries to employees be made directly to beneficiaries; and

(iv) a schedule of monies due under the commercial paper in the sum of Kshs.105,614,246.58, as well as Kshs.19,279,855.99 in respect of rent.

7. The Defendants further state that from a review of prior correspondence, the 1st Defendant became aware that, on 8th November 2017, the then Managing Director of the 2nd Defendant, Mr. Atul Shah, had voluntarily and specifically authorised in writing the Plaintiff to offset claims for settlement against the insurance premiums for the year 2017/2018. However, instead of complying with this authorization, the Plaintiff is alleged to have acted unilaterally, illegally, and arbitrarily. In particular, on 15th January 2018, via an email to the 2nd Defendant's brokers, Teeve Insurance Brokers, the Plaintiff is said to have adjusted discharge vouchers totaling Kshs.33,589,452/= to settle interest due on the commercial paper up to December 2017, being Kshs.21,899,589/=. This left a balance of Kshs.11,599,863/=, which the Plaintiff then applied to the principal amount on the commercial paper as at 31st December 2017, being Kshs.140,000,000/=, thereby reducing the principal to Kshs.128,400,137/=.

8. The Defendants further stated that in December 2017, Teeve Insurance Brokers, acting on behalf of the 2nd Defendant, lodged a complaint with the Insurance Regulatory Authority (IRA) regarding the Plaintiff's refusal to settle claims. These claims, they noted, had discharge vouchers duly executed and returned for settlement, but the Plaintiff declined to pay on the basis of extraneous and unrelated matters involving the commercial paper and rental arrangements with the 2nd Defendant. The Defendants aver that arising from this complaint, the IRA, by an email dated 11th December 2017, directed the Plaintiff to pay fully documented claims and not to link them to unrelated commercial paper or rental issues. The Plaintiff allegedly ignored this directive, prompting the 1st Defendant to lodge a further complaint with the Commissioner of the IRA concerning the Plaintiff's alleged illegal and arbitrary conduct. A meeting was convened by the IRA on 13th March 2018 to address the dispute. At that meeting, the regulator directed the Plaintiff to review its decision on outstanding payments, including those already offset against the commercial paper, and to report back to the Authority by 22nd March 2018. Following this, the 1st Defendant demanded immediate payment of the monies in question.

9. The defendants contend that the Plaintiff's claims for commercial paper and rental arrears are, already subject of litigation in the insolvency proceedings, where the Plaintiff has filed a proof of debt. They maintain that the amounts they demand are legally due and outstanding, and that any amounts owed by the 2nd Defendant to the Plaintiff form part of, and are subject to, the ongoing administration process. They deny the Plaintiff's version of events as set out in the Plaint.

10. The matter proceeded to hearing on 7th November 2024 and 25th November 2024. The Plaintiff called one witness, while the Defendants called two witnesses.

11. At trial, PW1, the Chief Operating Officer of the Plaintiff, adopted her witness statement dated 5th December 2024 and produced the Plaintiff's list of documents dated 4th June 2018. In cross-examination, she stated that she had worked in the insurance industry since 1994 and was well versed with the *Insurance Act* and the supervisory and regulatory role of the Insurance Regulatory Authority (IRA). She confirmed that the Plaintiff had three forms of engagement with the 2nd Defendant: the 2nd Defendant was insured by the Plaintiff, was a tenant in the Plaintiff's Eldoret property, and had borrowed money from the Plaintiff, providing commercial paper as security. PW1 confirmed that the Plaintiff had engaged with the IRA over certain insurance policies. When referred to the email of 11th December 2017, she stated that it was a complaint by the 2nd Defendant alleging that the Plaintiff had failed to settle claims despite premiums having been paid. The Plaintiff cited outstanding commercial paper and rental arrears as reasons for withholding payments. PW1 maintained that the IRA did not issue a directive in that email and that she was unsure whether the Plaintiff had responded to the IRA, as she had not seen any such correspondence.

12. PW1 testified that the Plaintiff reviewed its position as outlined in its letter of 28th February 2018 and acted as directed. She clarified that Item 3 of that letter referred to discharge vouchers for fatal injury claims, which were to be paid directly to beneficiaries as per IRA guidance. These claims had not been settled at the time the suit was filed. PW1 further stated that a second meeting was held on 13th March 2018 to address the 2nd Defendant's outstanding matters. The resolution from that meeting was that insurance claims should be settled strictly in accordance with the terms of the insurance contract in place; that the unilateral decision by Kenindia to offset the claim amounts was deemed unacceptable; She added that the fourth resolution required Kenindia to review its position outstanding payments and report back by 27th March 2018. PW1 confirmed that the plaintiff responded to the IRA through its lawyers and acknowledged the provisions of Section 3A(1)(a) of the *Insurance Act*.

13. During re-examination, PW1 testified that the fourth paragraph of the letter dated 18th March 2018 referred to key issues discussed and resolutions made, the primary issue being that rent and commercial paper should not be mixed with insurance matters. She reiterated that the IRA had not issued any directive to the Plaintiff. When referred to the letter dated 29th March 2020, she stated that in that letter, the 2nd Defendant had authorised the set-off of premiums against claim settlements. She confirmed that the total claim amount in question was Kshs.87,807,299/=.

14. DW1, Peter Obondo Kahi, an accountant and partner at PKF Kenya, adopted his witness statement dated 21st October 2022 and produced a list of documents dated 6th December 2018, along with a supplementary list of documents dated 7th January 2024. In cross-examination, he stated that he is an insolvency practitioner with over 30 years of experience and has been a partner at PKF for seven years. He was appointed as Administrator of the 2nd Defendant on 22nd January 2018. The administration period was last extended by a court order dated 11th March 2021, though the duration was unspecified. DW1 testified that the letter effecting the set-off was issued before his appointment and at that time, there was no objection to the set-off, since the company was not under administration. He acknowledged that several set-offs occurred after his appointment, though he could not identify them specifically. While referring to the email dated 11th December 2017, DW1 noted that it predated his appointment. In that correspondence, Kenindia was to review its position and revert, but no directive was given. He stated that Kenindia maintained its position, as communicated in the email dated 15th January 2018 from Ken Misati, that the set-off had been applied. In his view, the adjustments

were illegal and arbitrary because they offset claim amounts against unrelated debts. He clarified that, prior to his appointment, there was nothing illegal in the transactions.

15. When referred to the letter dated 16th February 2018 from Teeve Insurance Brokers Limited, DW1 testified that the letter did not use the words "illegal" or "arbitrary adjustments." Instead, it referenced premiums for 2015/2016 and 2016/2017 periods as having been paid, without mentioning the 2017/2018 premiums or any unpaid amounts. He acknowledged that the letter dated 29th March 2018, referred to in his witness statement, was not exhibited, an omission he attributed to oversight. Upon being shown the letter exhibited by the Plaintiff, he confirmed that the 2017/2018 premiums had not been paid. He further stated that he did not dispute the set-off, as it reflected the position prior to his appointment.

16. In relation to the email dated 16th March 2018, DW1 testified that Item 2 of the minutes reflected IRA's displeasure, while Items 1 and 2 were key discussion points, and Items 3 and 4 were key issues agreed. He interpreted IRA's communication as a request for the Plaintiff to review its position and report back but not a directive. He added that the IRA directed that *Work Injury Benefits Act* (WIBA) claims be paid directly to employees so that such payments would not be caught up in the administration process. DW1 further clarified that their letter dated 29th March 2018 was not what the trigger for the IRA meeting, as it was sent afterwards. He also noted that the reference to a letter dated 29th February 2018 was inaccurate. DW1 testified that filing of a proof of debt is not litigation but a statutory requirement for creditors. According to the 2nd Defendant's books, the outstanding claim was approximately Kshs.127 million. However, these claims had not been evaluated or approved by the Plaintiff, and the debt was disputed. DW1 testified that in his view, the Plaintiff was insolvent and had failed to meet its obligations, which is why it was issued with the statutory demand despite numerous documents having been placed before the court. He stated that it was incumbent upon the Plaintiff to prove both the set-off and the unverified claim.

17. Upon re-examination, DW1 confirmed that, prior to his appointment, as Administrator, the plaintiff was both the landlord of the 2nd defendant and a holder of commercial paper issued by the 2nd defendant. He stated that the position regarding set-off changed after his appointment as Administrator because allowing such offset would place the Plaintiff in the position of a preferential creditor, which it was not permitted under the law. DW1 added that he had not been served with any court order setting aside the ruling of 11th March 2021 which, had extended the administration period. According to him, the terms of the extension allowed him discretion to determine when the administration should conclude, especially given the number of pending court cases with unpredictable timelines. At the time of giving his testimony, he was still actively pursuing those cases with the aim of maximizing returns for creditors. DW1 further testified that, the Plaintiff did not attend meetings convened by the Insurance Regulatory Authority (IRA), although the minutes were shared with all relevant parties. He described the resolutions from those meetings as advisories from the IRA which required compliance. He stated that the Plaintiff had never produced any board resolution indicating its refusal to comply with the IRA's directions, nor had it adhered to the timelines set by the IRA. Referring to the email dated 16th March 2018, DW1 stated that the IRA's position was clear: each contract, rent, insurance, and commercial paper should be treated independently. He maintained that the Plaintiff's unilateral decision to offset claim amounts against the commercial paper was unacceptable, and that the Plaintiff had also failed to report back to IRA as per the resolutions. He further stated that, despite the statutory demand and repeated requests for payment, no payment was made. In his assessment, the Plaintiff was either unable or unwilling to pay. In conclusion, DW1 testified that he was not aware of any direct payments made under the *Work Injury Benefits Act* (WIBA) to any beneficiaries or family members.

18. DW2, Vinod Shukla, adopted his witness statement dated 23rd May 2022. In cross-examination, he testified that the premiums for the year 2017/2018 were outstanding, whereas the premiums for 2016/2017 and 2015/2016 had been paid. He therefore conceded that his earlier statement was inaccurate. He stated that he was familiar with the three business relationships between the Plaintiff and the 2nd Defendant because he was employed as the General Manager of Teeve Insurance Brokers, but clarified that his knowledge was limited to the insurance aspect only. He confirmed that he had no objection to the set-off claim and explained that, as a broker, he was primarily engaged in pursuing settlement of claims which the Plaintiff was to pay. DW2 further testified that he lodged a complaint with the IRA and that the Authority's response amounted to a directive issued in the form of an advisory. His general position was that the Plaintiff failed to comply with the IRA's advisory and that the statutory notice was issued because no payment had been made. He stated that he could not comment on matters relating to liquidation or the statutory notice itself. Upon re-examination, DW2 clarified that he became aware of the three business relationships only after claims from the Plaintiff were not settled. At that point, he was informed of the existence of other contracts. He stated that he attended a meeting with the Kenya Revenue Authority (KRA) where the issue of mixing the different contracts was discussed. He maintained that the Plaintiff did not comply with the IRA's directives.

19. Following the close of the parties' evidence, the Court directed the filing of written submissions. The Plaintiff's submissions are dated 30th January 2025. As at the time of writing this judgment, the Defendants had not filed their submissions.

Plaintiff's submissions

20. The Plaintiff commenced its submissions by summarizing both its own case and that of the Defendants. On the status of the 1st Defendant, the Plaintiff submitted that he was appointed as an Administrator of the 2nd defendant by a court order dated 22nd January 2018. Referring to Sections 593 and 594(1) of the *Insolvency Act*, the Plaintiff argued that the last extension of the 1st Defendant's tenure was granted on 11th March 2021 and that the order did not specify any period of extension. The Plaintiff contended that the law does not permit indefinite extensions of administration and that any extension granted without strict compliance with the statutory requirements is null and void ab initio and of no legal effect. Consequently, the Plaintiff maintained that the administration of the 2nd Defendant effectively came to an end, at the latest, on 11th March 2022 being twelve months after the last extension. In its view, there is no legal basis upon which the 1st Defendant can continue to act as Administrator of the 2nd Defendant or to pursue any of the claims he purports to assert against the Plaintiff.

21. Regarding the prayer for set off, the Plaintiff submitted that, by a letter dated 8th November 2017, the 2nd Defendant's Managing Director, Atul Shah, expressly authorized it to offset the 2nd Defendant's settlement claims against insurance premiums for the year 2017/2018. The Plaintiff further submitted that, through an email dated 15th January 2018, its Chief Manager, Claims, communicated to the 2nd Defendant's insurance brokers attaching a schedule of claims supported by duly executed discharge vouchers totaling Kshs 33,589,452/=. The email, detailed how the set-off was applied to both the principal and interest on the commercial paper, noting that the interest of Kshs 21,989,589/= was fully adjusted.

22. The Plaintiff added that by a letter dated 28th February 2018, it forwarded:

    (i) a list of active policies;

    (ii) a schedule showing outstanding premiums of Kshs.87,807,299/=;

(iii) a schedule of discharge vouchers received from the 2nd Defendant; and

(iv) a schedule of monies due from the 2nd Defendant under the commercial paper amounting to Kshs.165,614,246.58/=, as well as Kshs.19,279,885.99/= in rent arrears for the Eldoret premises.

It further submitted that, on 14th March 2018, the 1st Defendant convened a creditors' meeting, and ahead of that meeting, the Plaintiff lodged its proof of debt showing that the 2nd Defendant was owed it Kshs.87,807,299/= in premiums for 2017/2018, Kshs.19,279,885.99 in rent arrears, and Kshs.131,110,806.58 as the net balance on the commercial paper after reapplying a set-off of Kshs 34,503,440/=.

23. The Plaintiff submitted that by a letter dated 7th May 2018, it informed the 1st Defendant that it had applied a set-off of the amounts payable under the insurance policies and would not reverse the set-offs already made, and that any future amounts payable would be treated in the same manner. While citing Section 105 of the *Insurance Act* and Principles of Corporate Insolvency Law (4th Edition) by Roy Goode, the Plaintiff argued that the provision only applies to set-offs involving premiums due from the insured and claims payable by the insurer. It maintained that, there is no legal restriction on offsetting other liabilities such as rent and commercial paper obligations.

24. The Plaintiff submitted that the emails from the IRA did not amount to binding directives requiring it to reverse the set-offs. It noted that at page 18 of the correspondence, the IRA merely summarized key issues discussed and resolutions reached. According to the Plaintiff, Items 1 and 2 reflected the defendants' position that different contracts should not be mixed and that unilateral set offs was unacceptable. The Plaintiff maintained that its Board had reviewed the matter and resolved not to reverse the set-offs, which had been effected pursuant to express instructions from the 2nd Defendant's Managing Director.

25. The Plaintiff further submitted that even if the set-off amount of Kshs.33,589,452/= were applied against the outstanding premiums for the year 2017/2018, amounting to Kshs.87,807,299/=, the premium arrears would not be extinguished. It pointed out that DW2 admitted during cross-examination that his witness statement was inaccurate in claiming all premiums had been paid. This was also reflected in the IRA's email of 11th December 2017. The Plaintiff emphasized that the IRA's resolutions included a directive for the 1st Defendant to demand payment and for the Plaintiff to review its position. It further noted that, DW1 confirmed during hearing that, prior to his appointment as Administrator, it made no difference which liability were reduced through set-off. The Plaintiff contended that the Defendants had not produced any evidence showing that set-offs were applied after the 1st Defendant's appointment as Administrator of the 2nd Defendant. It maintained its entitlement to offset insurance claims against any debts owed by the 2nd Defendant.

26. Regarding the prayer for a declaration that it is not indebted to the Defendants in the sum of Kshs.181,344,573/=, the Plaintiff submitted that, on 16th May 2018, it received a statutory demand dated 14th May 2018 issued under Section 384 of the *Insolvency Act*, requiring payment within 21 days. The demand comprised Kshs.20,755,121/= and Kshs.33,589,452/= totaling Kshs.54,344,553/= which the statutory demand acknowledged had already been adjusted against other sums due to the Plaintiff, together with Kshs.127,000,000/= in respect of pending insurance claims.

27. The Plaintiff further submitted that it responded by a letter dated 23rd May 2018, outlining prior correspondence and explaining that it had set off Kshs.34,503,440/= and Kshs.19,841,113/= totaling Kshs.54,344,553/= against commercial paper obligations. It stated that it had also received discharge vouchers on insurance claims totaling Kshs.28,225,704/= of which Kshs.8,384,541/= was payable

directly to beneficiaries of deceased employees or to injured employees under the *Work Injury Benefits Act* (WIBA), and the balance of Kshs.19,841,113/= was to be set off against debts owed. The Plaintiff asserted that the 2nd Defendant was in fact indebted to it in the sum of Kshs.277,576,511.59, broken down as follows: Kshs.117,360,787/= on the commercial paper (with further interest accruing from 1st May 2018), Kshs .87,316,008/= in unpaid insurance premiums, and Kshs.22,899,716.59 in rent arrears for the Eldoret premises. It therefore contended that the amounts demanded in the statutory demand were baseless, and that, on the contrary, the 2nd Defendant owed it substantial sums. On this basis, the Plaintiff submitted that it is not indebted to the Defendants in the claimed sum of Kshs 181,344,573/=.

28. On the prayer for an injunction to restrain the 1st Defendant from commencing liquidation proceedings against it, the Plaintiff relied on Kenya Power & Lighting Co. Ltd v Matic General Contractors Ltd [2000] eKLR. It submitted that correspondence and proof of debt clearly show that the 1st Defendant acknowledged the Plaintiff's entitlement to set off insurance payments against debt owed. The Plaintiff contended that the 1st Defendant is also fully aware of the amounts due from the 2nd Defendant to the Plaintiff, and that the net position reflected a significant debt owed to the Plaintiff. In support of its position, the Plaintiff cited Universal Hardware Limited v African Safari Club Limited, MSA CA Civil Appeal No. 209 of 2007 [2013] eKLR, and pointed to its audited financial statements showing net assets of Kshs.3,127,559,000/= as at 31st December 2016, and f Kshs.3,694,286,000/= as at 31st December 2017.

29. In conclusion, the Plaintiff submitted that it is the fourth largest pension fund holder in Kenya, managing 243 pension schemes, and ranks among the top ten largest insurance companies in the country, with 15,781 general business policies and 33,000 life insurance policies. On this basis, it maintained that it is not insolvent and therefore urged the Court to issue an injunction restraining the 1st Defendant from initiating liquidation proceedings against it.

Analysis and Determination

30. Having carefully considered the pleadings, evidence and submissions presented, the court identifies the following key issues for determination;

    a. Whether the 1st Defendant had lawful authority to act as Administrator of the 2nd Defendant at the material time.

    b. Whether the Plaintiff was entitled to set off insurance claim payments against other debts owed by the 2nd Defendant (including rent and commercial paper)

    c. Whether the Plaintiff is indebted to the Defendants in the sum of Kshs 181,344,573 or any amount.

    d. Whether an injunction restraining liquidation proceedings should issue.

    a) Whether the 1st Defendant had lawful authority to act as Administrator of the 2nd Defendant at the material time.

31. The Plaintiff challenged the validity of the 1st Defendant's continued administration of the 2nd defendant citing Sections 593 and 594(1) of the *Insolvency Act*. These provisions clearly stipulate that an administration automatically ends after twelve months unless extended by court order or creditor consent for a specified period. Specifically, Sections 593 and 594(1) of the *Insolvency Act* provides that;

    " 593. Automatic end of administration

The appointment of an administrator automatically ends at the end of twelve months from and including the date on which it took effect.

594. Circumstances in which administrator's term of office can be extended

(1) Despite section 593—

(a) on the application of an administrator, the Court may by order extend the administrator's term of office for a specified period; and

(b) an administrator's term of office may be extended by consent for a specified period not exceeding six months.

(2) An order of the Court made under subsection (1)(a)—

(a) may be made in respect of an administrator whose term of office has already been extended; but

(b) may not be made after the administrator's term of office has ended.

(3) As soon as practicable after an order is made under (1)(a), the administrator shall lodge a copy of the order with the Registrar for registration."

32. The last extension granted by the court on 11th March 2021 did not specify the period. The Plaintiff argued that in the absence of a defined period, the administration legally lapsed on 11th March 2022. Accordingly, any actions taken by the 1st Defendant thereafter, including the statutory demand lacked a legal basis. In response, the 1st Defendant relied heavily on the wording of the 11th March 2021 order to justify his continued authority. The order stated:

> " 1. That the Administration Order be and is hereby extended to enable the Administrator to carry out the matters set out in the report...Continue pursuing court cases filed for and against the company with various persons and or creditors as moreContinue all efforts aimed at collection of funds due to the company whose recovery during the Administration period has been extremely hard and not as fruitful as anticipated due to the unprecedented ravaging impacts of the pandemic which has had devastating effects on businesses and persons in Kenya.Not hesitate to file dissolution notice at any point in time when he reasonably forms the opinion that the aforesaid efforts are not working in the best interests of the company and all the creditors as a whole."

33. From this, the 1st Defendant argued that the court intentionally left the administration period open-ended, allowing him to determine its conclusion depending on the progress of litigation and recovery efforts.

34. While the language of the order of the court's recognizes the challenges posed by the COVID 19-pandemic, the statutory framework under the *Insolvency Act* does not permit indefinite extensions. Sections 593(2) and 594(1) of the *Insolvency Act* expressly requires that any extension of an administrator be "for a specified period." The statute does not contemplate an indefinite tenure, even if

tied to practical milestones such as completion of court cases or debt collection. The absence of a fixed period in the order may be explained by the unusual circumstances cited notably, the slow progress of recovery efforts due to the COVID-19 pandemic but that cannot override express statutory limits. Thus, the absence of such specificity renders the extension legally defective.

35. Further, insolvency practice generally frowns upon indefinite administrations because they create legal uncertainty for creditors, counterparties, and even the debtor company. The proper course would have been to seek periodic extensions, each specifying the duration, allowing the court to exercise oversight in reviewing the progress and necessity.

36. That said, the 11th March 2021 order remained on record and was not set aside or varied. Thus it gave the 1st defendant the basis to continue acting. However, its open-ended nature means that after a reasonable interpretation of the statutory maximum, his authority beyond 11th March 2022 is legally tenous and susceptible to successful challenge. I am guided by the Court of Appeal's decision in the case of Cape Holdings Limited (Under Administration) v Synergy Industrial Credit Limited & 2 others (Civil Appeal (Application) E415 of 2023) [2024] KECA 165 (KLR) (23 February 2024) (Ruling) where the court held that;

> "
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> 14. We are further persuaded that the issue of not extending the term of an administrator whose term has expired is well taken care of by the law. We agree with the 1st respondent's submissions that the provision of sections 593 and 594 of the *Insolvency Act* do not allow such re-appointment or extension and yet, that is what we are being called upon to do. Those provisions are in terms:
>
> 593. The appointment of an administrator automatically ends at the end of twelve months from and including the date on which it took effect.
>
> (1) Despite section 593 -
>
> a. on the application of an administrator, the Court may by order extend the administrator's term of office for a specified period; and
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> b. an administrator's term of office may be extended by consent for a specified period not exceeding six months.
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> 2. An order of the Court made under subsection (1)(a)-
>
> a. may be made in respect of an administrator whose term of office has already been extended; but
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> b. may not be made after the administrator's term of office has ended.
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> 15. From the foregoing, it must be clear to all and sundry that this Court has no jurisdiction to extend or re-appoint an administrator whose term has expired,

> accordingly the prayer of status quo ante sought in the application cannot be granted for to do so will be tantamount to reinstating or re-appointing an administrator whose term has expired by operation of law which is not permissible. This conclusion suffices to dispose of the entire application.

37. The 1st Defendant's reliance on the 11th March 2021 order gives him an arguable justification for believing his administration continued, but in strict legal terms, the order's lack of a fixed period conflicts with the *Insolvency Act*. On a purposive reading of the statute, his authority beyond March 2022 was at best precarious and at worst ultra vires. As an Insolvency Practitioner of repute, it was incumbent upon the 1st Defendant to seek extension at the expiry of the 12 month duration contemplated by statute.

b) Whether the Plaintiff was entitled to set off insurance claim payments against other debts owed by the 2nd Defendant (including rent and commercial paper)

38. The Plaintiff relied on express written authorization by the 2nd Defendant's Managing Director, Atul Shah, dated 8th November 2017, permitting it to offset insurance settlement claims against premiums due for the 2017/2018. Building on this authorization, the Plaintiff extended the set-off to include rent arrears and amounts owed under commercial paper, arguing that there was no statutory restriction against such cross-liability set-offs outside the scope of the insurance contract. The Defendants, however contended that the IRA had directed that insurance contracts be treated separately and independent from other commercial arrangements. They urged that unilateral set-offs against non-insurance debts were improper and cited meetings and correspondence with the IRA to support their claim that the Plaintiff had ignored advisories to reverse the offsets.

39. The common practice is that, set-off is generally permitted if there is mutuality and agreement between the parties. The Plaintiff's reliance on the 2nd Defendant's written authorization supports the legitimacy of the initial insurance-premium offset. However, once the 2nd Defendant was placed under administration the framework shifted. Under insolvency, post administration set-off are subjected to stricter scrutiny as they may result in preferential treatment of one creditor over others. This position was further admitted by DW1 who acknowledged during cross-examination that pre-administration set offs were not in dispute but challenged those done afterwards. Notably, the Defendants produced no evidence of post-administration set-offs. In fact, DW1 during cross examination said, "Several set off were done after my appointment. At the moment, I can't identify any" Thus, this admission coupled with the absence of evidence showing that any set-off occurred after the commencement of administration, reinforces the Plaintiff's position that all offsets were effected prior to the 1st defendant's appointment and on the strength of the former Managing Director's authority and consent. The plaintiff evidence remains unshaken.

40. Based on the evidence presented, the court finds that the Plaintiff was entitled to apply the pre-administration set-offs as authorized by the 2nd defendant's Managing Director. There is no sufficient proof of unlawful or post-administration set-offs conducted after the commencement of the administration, Accordingly the plaintiff's actions in applying the set -off prior to the 22nd January 2018 were valid and lawful.

c) Whether the Plaintiff is indebted to the Defendants in the sum of Kshs.181,344,573/= or any amount

41. The statutory demand of 14th May 2018 comprised Kshs.54,344,553/= (acknowledged to have been offset) and Kshs 127 million in pending insurance claims allegedly due from the plaintiff. The Plaintiff

maintained that after applying set-off and accounting for the substantial debts owed to it by the 2nd defendant (commercial paper, rent, and unpaid premiums), the net position was that the 2nd Defendant remained heavily indebted to the plaintiff. The Defendants relied on their books of account, to support the claim of pending insurance liabilities but conceded that these claims had not been evaluated or approved by the Plaintiff. DW2 also confirmed during cross-examination that some premiums remained unpaid further complicating the accounting position.

42. The statutory demand process under Section 384 (1) (c) of the *Insolvency Act* requires the debt to be due and undisputed. It states that;

> " 384. The circumstances in which a company is unable to pay its debts
>
> (1) For the purposes of this Part, a company is unable to pay its debts —
>
> (a) .....;
>
> (b) .....
>
> (c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due."

43. In this instance, the debt amount was actively contested, both in quantum and in principle (due to set-off). The existence of mutual debts, disputed claims, and unresolved evaluation undermines the definitiveness of the Kshs.181,344,573/= claim.

44. Accordingly, the court finds that the Plaintiff is not indebted to the Defendants in the claimed sum. Rather, the matter involves a disputed mutual accounting that is more appropriately resolved through civil and not insolvency proceedings.

d) Whether an injunction restraining liquidation proceedings should issue

45. The Plaintiff argued that liquidation proceedings would cause irreparable harm to its reputation and business. It emphasized that it is financially solvent, citing audited net assets exceeding Kshs 3 billion in 2016 and 2017. The plaintiff relied on precedents where courts have restrained liquidation where the debt is disputed on substantial grounds. The Defendants maintained that the statutory demand was proper and unpaid justifying liquidation.

46. Courts generally restrain liquidation proceedings where the alleged debt is disputed on substantial grounds, especially where the debtor is demonstrably solvent. In this case, the debt, is contested, the administrator continued authority is legally questionable, and the Plaintiff's financial standing is robust. The balance of convenience therefore favours the plaintiff who has met the threshold for grant of injunctive relief to restrain liquidation proceedings arising from the impugned statutory demand.

47. The appointment of the 1st Defendant having been found to be unlawful, it is no longer tenable to interrogate the statutory notice or insolvency proceedings instituted by him.

48. Based on the above, I direct as follows;

a. The 1st Defendant's authority to act as Administrator after 11th March 2022 is unlawful.

b. The Plaintiff lawfully applied pre-administration set-offs as authorized by the 2nd Defendant's Managing Director.

c. The Plaintiff is not indebted to the Defendants in the sum of Kshs.181,344,573/= as it remains disputed and subject to mutual accounting.

d. The statutory notice issued by the 1st Defendant against the Plaintiff is struck out

e. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 9TH DAY OF SEPTEMBER 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Plaintiff

.....Defendants

Selina Court Assistant