



**Waterer & another v Eccles (Insolvency Petition E021 of 2024)
[2025] KEHC 12911 (KLR) (Commercial and Tax) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12911 (KLR)

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

INSOLVENCY PETITION E021 OF 2024

F GIKONYO, J

SEPTEMBER 18, 2025

IN THE MATTER OF PEPO PLACE LIMITED

BETWEEN

CATHERINE EUPHAN WATERER 1ST PETITIONER

VANESSA MARY STRONG 2ND PETITIONER

AND

GORDON ECCLES RESPONDENT

RULING

1. The respondent filed the notice of motion dated 2nd December 2024 seeking referral of the dispute between the parties to arbitration and a stay of the insolvency proceedings pending referral, hearing and determination of the dispute.
2. The application is brought under section 6 of the *Arbitration Act*. It is based on the grounds on its face, the supporting and supplementary affidavits sworn by the respondent on 2nd December 2024 and on 22nd January 2025 and written submissions dated 22nd January 2025.
3. The application is opposed by the 1st and 2nd petitioners through the replying affidavit sworn by the 1st petitioner on 18th December 2024 and written submissions dated 20th February 2025.

Background

4. The 1st and 2nd petitioners and the respondent are shareholders of Pepo Place Limited with 75%, 4% and 21% shares respectively.



5. The company is the registered proprietor of L.R. No. 192/50 in Karen (the property). The property has two (2) sections, A and B. The 1st petitioner stays on section A of the property while the respondent stays on section B of the property.
6. A dispute amongst the shareholders ensued when the 1st petitioner expressed a desire to sell section A in December 2023, as the respondent disapproved.
7. The 1st petitioner thus proposed to subdivide the property and sell off section A. However, a dispute arose regarding the subdivision, given that there are some shared amenities on the property.
8. On the other hand, the petitioners deposed that the respondent has been unwilling to allow for the sale of the Pepo Property or even a buyout of his shares thus leading to a deadlock. That the respondent has variously contravened the code of conduct during his possession of Plot B. That once a firm offer to purchase section A was received, the respondent was engaged and given proposals for restructuring the company's shareholding structure post sale, but the proposals were declined.
9. The petitioners further stated that, due to the foregoing, they requested the Company Secretary to issue Notices for a General meeting whose purpose was to propose a resolution to place the company into a members' voluntary liquidation under Section 393 (1) (B) of the *Insolvency Act*, and to appoint Joyce Mbui as the liquidator for the purpose of winding up the Petitioner and distributing its assets. The said Notice was duly issued on the 31st May 2024. That from the general meeting held virtually on 21st June 2024, the parties were unable to unanimously resolve whether or not the Company should be wound-up and a liquidator appointed.
10. The respondent denied violating the code of conduct. He contended that contrary to the Memorandum and Articles of Association there was no meeting by the shareholders where the proposal to sub-divide the property was made and passed as a resolution. That he was not aware prior to the action of putting up plot A in the market for sale. That there was no agreement on the subdivision of the entire property to facilitate the proposed sale.
11. As regards the meeting of 21st June 2024, the respondent stated that he was denied an opportunity to address the meeting on the agenda.
12. The respondent also claimed that the petitioners together with Mr. Richard Harney, a director of the company colluded to unlawfully and illegally pass a resolution to wind up the company without attempting to resolve the dispute first. That this is in breach of Articles 35, 36 and 37 of the Memorandum and Articles of Association, which require: a resolution to be duly passed by at least one Director representing the Minority Shareholder and a unanimous decision of the Shareholders.
13. The respondent stated that after the petitioners purported to appoint, Ms. Joyce Mbui as liquidator of the Company and issued him with a notice to vacate the house that he occupies, he filed High Court Misc. Comm Case No. 513 of 2024 in seeking to have the disputes referred to arbitration.

Submissions

14. The respondent submitted that the court in HCComm Misc No. E513 of 2024; Gordon Eccles v Catherine Waterer & Others issued an order stopping the implementation of the resolution to Wind up. That the matter is pending hearing. That upon the order referred to above being issued, the petitioners filed these proceedings.



15. The respondent asserted that the petitioners having claimed a deadlock, any dispute between the shareholders must first be submitted to Mediation then Arbitration, pursuant to Clause 32 of the Memorandum and Articles of Association.
16. The respondent relied on:-
 1. Woburn Estate Ltd & Another v Dysara Investment Ltd & Others [2018] eKLR
 2. Southern Shield Holdings Limited v Tandala Investment Company Ltd [2018] eKLR
 3. Jatin Shantilal Malde & 9 others v Transmara Investment Limited, & 2 others [2018] eKLR
 4. Libyan Arab
5. African Investments Company Kenya Ltd v Match Electricals Company Ltd, Ins Notice No. E031 of 2020
17. The petitioners asserted that the parties attempted to have the dispute resolved through mediation, but they were not able to agree on the mediator who was to conduct the proceedings. That the fact that there exists an agreement with an arbitration clause does not oust this Court's jurisdiction to entertain a liquidation Petition under the provisions of the *Insolvency Act* and it would be a waste of judicial time to stay the Insolvency proceedings herein.
18. The petitioners also argued that mediation and arbitration cannot be imposed upon parties to a dispute who are unwilling to embrace an alternative form of dispute dissolution or where the dispute at hand is not arbitrable in the first instance.
19. The petitioners further submitted that section 423 of the *Insolvency Act* confers absolute jurisdiction to the court to supervise liquidation of companies which then grants the liquidation order. That if the shareholders are deadlocked, the company is incapable of being a party, hence the reason why the matter cannot be referred to Arbitration.
20. The petitioners relied on:-
 1. In the matter of Kangawana Investments Company Limited [2012] KEHC 278 (KLR)
 2. Rift Valley Railways (K) Ltd vs. Kenya Shell Limited Nairobi (Milimani) HCWC No. 2 of 2009
 3. In re Ukwala Supermarket Limited [2019] eKLR
 4. Banda Homes Limited v Obuya [2023] KEHC 3409 (KLR)
 5. In re Kenya Airfreight Handling Limited [2021] KEHC 4939 (KLR)
 6. In re Matter of Nature Green Holdings [2018] eKLR

Analysis and Determination

21. From the outset, I note that the respondent averred that he filed HCComm Misc No. E513 of 2024; Gordon Eccles v Catherine Waterer & Others seeking to stop the implementation of the resolution to wind up the company. He produced the pleadings in that matter, and the court order issued, stopping the implementation of the resolution. Upon the order being issued, the petitioners filed the instant insolvency petition.



22. From a study of the pleadings in HCComm Misc No. E513 of 2024; Gordon Eccles v Catherine Waterer & Others, I find that the underlying shareholders' dispute in the suit and the instant liquidation proceedings is over the same subject matter. The issue of referral of the dispute to arbitration is also pending in the said suit.

23. Section 6 of the Civil Procedure Act provides that: -

“6. Stay of suit

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

24. It appears that a claim of sub-judice is apparent. The Supreme Court in Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR, observed that: -

“The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit.

A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

25. The court is properly guided that:

“It is not always that, a suit that is sub judice should be struck out. In ordinary circumstances, the law presumes that a suit which is sub judice, should be stayed or consolidated with the one earlier in time.” Thumbi v Kariuki [2025] KEHC 6569 (KLR)

26. Therefore, I direct that the two matters be heard together before the same court. (Hon. Lady Justice Dr. F. Mugambi J.) who will determine, inter alia, issues of referral to alternative methods of dispute resolution under the Memorandum and Articles of the Company and article 259(2)(c) of the Constitution.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025 THROUGH TEAMS ONLINE APPLICATION.

F. GIKONYO M

JUDGE

In the presence of: -



Wandabwa for Respondent
Otieno for Anzela for Applicant
CA - Kinyua

