



Parsaurei (Suing as the personal representative of Masare Ole Alaseso Mapi alias Alasejo Mapi (Deceased) v Arm Cement Limited (In Liquidation) (Miscellaneous Application E473 of 2022) [2024] KEHC 1020 (KLR) (Commercial and Tax) (8 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E473 OF 2022**

**PM MULWA, J
FEBRUARY 8, 2024**

BETWEEN

LELOPA OLE PARSAUREI (SUING AS THE PERSONAL REPRESENTATIVE OF MASARE OLE ALASESO MAPI ALIAS ALASEJO MAPI (DECEASED) APPLICANT

AND

ARM CEMENT LIMITED (IN LIQUIDATION) RESPONDENT

RULING

1. By a Notice of Motion dated 24th June 2022, the applicant herein substantially seeks to be granted leave to continue with the suit against the Respondent on behalf of the estate of Masare Ole Alaseso Mapi Alias Masarei Ole Alasejo Mapi (now deceased) in Kajiado ELC Case Number 201 of 2018. She also prayed that the costs of the application be provided for.
2. The application is supported by an affidavit sworn by Lelopa Ole Parsuarei, the deceased’s widow. According to the applicant, the deceased was the registered owner of land Ref. Kajiado/Ololoitikoshi/Kitengela/3 which was subdivided by the respondent and sold to third parties. That leave to enjoin the respondent as a defendant was granted by Hon. Justice Mabeya on 25th February 2022. At the time the respondent was under administration, but has since been placed under liquidation and therefore leave must be sought to proceed with the suit to preserve the estate from being disposed of.
3. In opposing the application, George Weru one of the joint liquidators of the respondent filed the Replying Affidavit sworn on 20th December 2022, in which he depones that the applicant has no cause of action against the respondent capable of being continued in Kajiado ELC No 201 of 2018 and that the respondent will incur huge litigation costs to the detriment respondent’s creditors.



4. The application was canvassed through written submissions. Both the applicant and the respondent filed submissions on 6th February, 2023 and 17th March, 2023 respectively.

Analysis

5. Having perused the pleadings and the submissions, the question for determination is whether the applicant should be granted leave under section 432(2) of the *Insolvency Act* to proceed with the suit against the respondent as the 15th defendant in Kajiado ELC Case No 201 of 2018.
6. Section 432 of the *Insolvency Act* provides: -
 1. Within seven days after a liquidation order is made in respect of a company, the company shall lodge a copy of the order with the Registrar for registration and also lodge a copy of it with the Official Receiver.
 2. When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate.
 3. An order for liquidating a company operates in favour of all the creditors and of all contributories of the company as if made on the joint application of all of them.”
7. The provisions of section 432(2) are clear that in instances of a company winding up, leave of the court must be sought before any action or proceedings is proceeded or commenced on the company.
8. The applicant brought a claim against the respondent and others claiming the suit property belonged to the deceased, but was illegally and fraudulently taken by the respondent who sub-divided and sold it to other persons. The suit against the respondent was initiated before the appointment of liquidators when the company was still under administration.
9. I have noted that this court by the ruling of Justice Mabeya on 25th February 2022 granted the applicant leave to commence a suit against the respondent. Subsequently, the company was placed under liquidation and thus the need to seek leave to proceed with the matter as filed against the respondent.
10. It is further noted Kajiado ELC Case No 201 of 2018 is still pending and the same ought to be determined to its finality. I am persuaded that the applicant has a genuine claim over the respondent and may suffer loss unless the suit, whose subject matter is Kajiado/Ololoitikoshi/Kitengela/3, is not determined with finality.
11. The respondent was opposed to the application on the basis that the property no longer belongs to it and that it would incur huge litigation costs to the detriment its creditors. My finding is that this assertion does not in any way assist the court in judiciously determining the said matter.
12. In the interest of justice and in the spirit of ensuring that justice is served for all parties, I invoke the provisions of Section 432(2) of the *Insolvency Act* and grant leave to the applicant to proceed with the matter from where it had reached.



Determination

13. I find the Notice of Motion application dated 24th June, 2022 has merit and I allow the same as prayed.
The costs of the suit will abide the outcome of the main suit.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF FEBRUARY 2024.

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P. MULWA

JUDGE

In the presence of:

Mr. Karwanda for the Applicant

Mr. Wafula for the Respondent

Court Assistant: Carlos

