



**Ooko v Xplico Insurance Company Limited (Insolvency Petition
E002 of 2023) [2024] KEHC 2621 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2621 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
INSOLVENCY PETITION E002 OF 2023
JK SERGON, J
MARCH 12, 2024**

BETWEEN

OSCAR OCHIENG OOKO PETITIONER

AND

XPLICO INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 11th July, 2023 seeking the following orders;
 - (i) Spent
 - (ii) That this Honourable Court be pleased to issue a temporary injunction restraining the petitioners jointly and severally by themselves and/or through their agents, servants and/or employees or otherwise whatsoever from advertising the petition in the Kenya Gazette and/or in any newspaper and/or in any newspaper and/or however pending hearing and determination of this application.
 - (iii) That this Honourable Court be pleased to stay proceedings in the petition herein pending the hearing and determination of this application.
 - (iv) That this Honourable Court be pleased to adjourn hearing of the insolvency petition for a period of 10 months or such a period the court may deem fit to enable the parties herein agree on a framework for settlement of the debt subject of this petition.
 - (v) That the costs of this application be in the cause
2. The application is supported by grounds on the face of it and the supporting affidavit of Caroline Malinda a Legal Officer at M/S Xplico Insurance Company Limited the applicant herein.



3. The supporting affidavit is in support of the instant application filed in opposition to the Petition dated 4th May, 2023 seeking to liquidate /wind up the applicant's company.
4. The applicant avers that in the past year, it incurred substantial losses on account of fraudulent and fictitious claims perpetrated, aided and/or abetted by well organized cartels involving non-existent claimants and unscrupulous lawyers through instituting civil suits using forged and/or doctored documentation.
5. The applicant avers that on 11th May, 2023 the Petitioner/Respondent served the company with the insolvency petition seeking liquidation orders against the applicant for the alleged failure to settle a judgment in a declaratory suit totaling to Kshs. 2,402, 163/=. Soon thereafter they engaged with the Petitioner's advocates with a view to settle the matter out of court and settle the debt amount through a monthly payment plan, however, the Petitioner's advocates insisted on proceeding with the petition which the applicants were adamant is an abuse of court process and that the instant petition is being used as a debt collection tool against the applicant.
6. The applicant avers that as an insurance company it operates in a strictly regulated industry and there is no evidence on record to show that it was incapable of meeting its debts as and when they fall due or that the Commissioner of Insurance was served with the petition.
7. The applicant maintained that whereas there may be delays in processing of claims due to the process of validation and verification of claims with a view to safeguard the applicant against infiltration of fraudulent claims, the applicant has steadfastly settled claims. The applicant conceded that the company was facing financial constraints due to the hard economic environment which has crippled business operations.
8. The applicant is apprehensive that if the petition is published it will cause extreme damage and prejudice to the applicant as a wrong impression would be created to its customers, insured, employees, bankers, creditors, the Regulator, the Kenya Revenue Authority and the general public that the company is insolvent.
9. The applicant proposed that if the instant petition is not struck out and/or dismissed, the hearing of the petition should be adjourned for 10 months to enable the parties agree on a framework for settlement of the debt subject of this petition.
10. Oscar Ochieng Ooko the respondent herein, filed a replying affidavit in response to the instant application.
11. The respondent avers that on 14th August, 2013 he was a lawful pedestrian near Kericho Nursing Home when he was knocked down by motor vehicle registration number KBA 081 H, which was being recklessly and/or negligently driven by the applicant's insured and he sustained serious injuries as a result of the said accident.
12. The respondent instructed his advocates to file a suit and consequently, the advocates filed a suit vide Kericho CMCC No. 92 of 2015 for compensation of loss occasioned to him and judgment was delivered on 10th October, 2017 in his favour.
13. The respondent avers that after judgment was delivered, the applicant was issued with a notice of entry of judgment, the applicant's insured failed to make good of the decretal amount and thus proceeded to file a declaratory suit against the applicant to satisfy the judgment in Kericho CMCC No. 92 of 2015, summary judgment was entered against the applicant, who failed to settle the decretal amount and his advocates on record proceeded with execution by attachment of property.



14. The respondent avers that the applicants filed an application seeking that the warrants of attachment be lifted with a proposal to settle the decretal amount in installments of Kshs. 150,000/=, the application was consequently dismissed on account of the applicants indebtedness. On 21st May, 2020, the respondent's advocates on record wrote to Hegeaons Auctioneers to proceed with execution, on 6th July, 2020 the Auctioneers forwarded a cheque of Kshs. 100,000/= and that to date the applicant has neglected and/or reneged on settling the balance of the decretal amount.
15. The respondent avers that the applicant did enter appearance in the primary and declaratory suit, an indication that they had verified the claim and proceeded to defend the matter and therefore the inordinate delay could not be attributed to a delay in processing of the claim on account of validation and verification, yet they had acknowledged the debt and begun settling the said debt.
16. The respondent avers that upon the applicant being served with the statutory demand, the applicant neither filed an application to set aside the statutory demand nor offered a plausible proposal to settle the decretal amount and the failure to satisfy the amount stated in the statutory demand within the stipulated time precipitated the instant petition which was served upon the Commissioner of Insurance.
17. The respondent faulted the applicant for failing to furnish any document on its solvency standing and therefore the instant application ought to be dismissed to pave way for hearing and determination of the creditor's petition.
18. The court directed the parties to canvass the application by written submissions, however, at the time of writing this ruling, none of the parties had complied.
19. I have however considered the pleadings filed by the parties and I find that the pleadings are well set out and detailed enough to assist this Court to ascertain the scope of the dispute between the parties herein. I therefore find that the main issue for this court's determination in the instant application is whether this court should give directions adjourning the hearing of the insolvency petition for a period it may deem fit to enable the parties herein agree on a framework for settlement of the debt subject of this petition.
20. The applicant acknowledges its indebtedness to the respondent for the decretal sum Kshs. 2,402, 163/= arising from the judgment entered against it in Kericho CMCC No. 92 of 2015. The applicant avers that they engaged with the Petitioner's advocates with a view to settle the matter out of court and settle the debt amount through a monthly payment plan.
21. However, from the chronology of events it appears that the applicant forwarded a cheque of Kshs. 100, 000/= to avert attachment of their properties sometime in 2020, then neglected and/or defaulted in settling the balance of the decretal sum.
22. The respondent on his part, on account of continuing default served a statutory demand on the applicant. The applicant neither filed an application to set aside the statutory demand nor offered a plausible proposal to settle the decretal amount and the failure to satisfy the amount stated in the statutory demand within the stipulated time precipitated the instant petition, which was served upon the Commissioner of Insurance.
23. I have considered the gravity of the instant petition and the fact that the applicant is apprehensive that if the petition is published in the Kenya Gazette, it will cause extreme damage and prejudice to the applicant as a wrong impression would be created to its customers, insured, employees, bankers, creditors, the Regulator, the Kenya Revenue Authority and the general public that the company is insolvent.



24. I also take cognisance of the fact that the applicant has conceded to delays in processing claims due to the process of validation and verification of claims with a view to safeguard itself against infiltration of fraudulent claims but in the same breath prided itself for steadfastly settling insurance claims. I am therefore inclined to accommodate the applicant.
25. I hereby allow the application dated 11th July, 2023, with the following consequential orders;
- (i) I hereby direct the parties to agree on a framework for settlement of the debt subject of this petition within forty five (45) days of this ruling.
 - (ii) I hereby adjourn hearing of the insolvency petition for a period of six (6) months to allow the applicant to comply with the framework for settlement of the debt subject of this petition as agreed upon by the parties.
 - (iii) This matter to be mentioned on 8/5/2024 to enable the Court ascertain whether parties have agreed on the debt settlement framework.
 - (iv) The costs of this application be in the cause

DELIVERED, SIGNED AND DATED AT KERICHO THIS 12TH DAY OF MARCH, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

No Appearance for the Parties

