



Athi River Steel Plant Limited Under Receivership & another v Rao & 4 others (Commercial Case E325 of 2022) [2024] KEHC 7595 (KLR) (Commercial and Tax) (21 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7595 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E325 OF 2022**

A MABEYA, J

JUNE 21, 2024

BETWEEN

**ATHI RIVER STEEL PLANT LIMITED UNDER RECEIVERSHIP 1ST
PLAINTIFF**

**GREAT KENFAST WORKS LIMITED (UNDER RECEIVERSHIP) 2ND
PLAINTIFF**

AND

PONANGIPALLI VENKATA RAMANA RAO 1ST DEFENDANT

COMMERCIAL BANK OF AFRICA LIMITED 2ND DEFENDANT

KCB BANK OF KENYA LIMITED 3RD DEFENDANT

BANK OF AFRICA LIMITED 4TH DEFENDANT

I&M BANK LIMITED 5TH DEFENDANT

RULING

1. Before Court is the application dated 2/2/2024 brought under Order 40 rules (1) and (4), Order 50 Rule 1 of the *Civil Procedure Rules* 2010, Section 3, 3A and 63(c) of the *Civil Procedure Act*.
2. The applicant sought that the Court do settle the terms of reference for valuation to include the cost of putting up the plant and machinery back to working condition capable of production. That the plaintiff's time for redeeming the charged assets be extended to six months upon receipt of the valuation. That the Court supervises and settles the terms of sale of the plaintiff's assets charged to the defendants which include Land Reference Nos 17849, 17851, 17853, 17854 and 17855 Mavoko Township.



3. The application was supported by the grounds on the face of it and the supporting affidavit sworn by Ravinder Kumar Gupta dated 2/2/2024. It was the plaintiffs' position that by the ruling of 24/10/2024, the Court directed the defendant to carry out a valuation of the plaintiff's assets and offer the plaintiff the first priority to redeem the securities.
4. That on 17/1/2024, the defendants issued the plaintiffs with a letter giving a 14-day notice to pay Kshs 10,153,225,436.22 and redeem the charged assets. The plaintiffs contended that that was a premature demand as no valuation had been conducted. That their letter of 19/1/2024 protesting the notice was ignored. That it was clear that the defendants were not desirous of complying with the Court order.
5. It was further contended that the plaintiffs were stopped from inspecting the company premises even after the Court had allowed them to do so. That the plaintiffs had identified an investor and the engineer they hired recommended that a valuation be conducted and a cost analysis of reviving the machinery and production capability be considered in the valuation report.
6. In opposition, the 1st to 5th defendant filed a replying affidavit dated 7/2/2024 sworn by Ponangipalli Venkata Ramana Rao. He averred that he had complied with the order of the Court by allowing the plaintiffs to access the company premises and carry out an inspection for a period of two weeks. That the order did not give a defined period for inspection. That the plaintiffs were allowed and did access the premises between 10th to 15th March, 2023 the applicants accessed the premises and conducted a valuation.
7. It was the defendants' case that the plaintiffs were given 14 days to redeem the assets of the company and the same lapsed on 31/1/2024 without any offer being made. That the valuation report was not a prerequisite of making an offer by the plaintiffs and therefore were not prejudiced in the absence of the valuation.
8. In the further affidavit sworn on 12/2/2024 by Ravinder Kumar, it was averred that any potential investor would like to see the current state of the assets and the cost of putting the factory back to business. That that could only be achieved where a current valuation was conducted and shared with the plaintiffs and the Court and the same ought not to be hidden. That the plaintiffs had no faith in the defendants and prayed that the terms of the sale be supervised by the Court.
9. The application was canvassed by way of written submissions which I have considered. The main issue for determination is whether the plaintiffs are deserving of the orders sought in the application. They sought three prayers; directions that the valuation report to be conducted by the defendants to include the cost of putting up the machinery back to working condition, that there be an extension of time from 14 days to 6 months for redeeming the assets and finally that the Court do supervise the sale of the assets.
10. On 24/10/2023, the Court dismissed the plaintiffs' prayer for injunction in its application of 25/8/2022. However, the Court directed that the plaintiffs be granted access to the premises upon giving the defendants notice. The 1st defendant was further ordered to carry out a current and independent valuation of the property and give the plaintiff the first opportunity to redeem the securities. And upon expiration of 14 days the 1st defendant was at liberty to dispose the assets.
11. The plaintiffs' case was that the 1st defendant issued them with a notice to redeem the said properties before complying with the order about valuation. The plaintiff terms this move as premature and since they had identified an investor they needed a cost analysis for production capability to be included in the valuation report.



12. In rebuttal the defendants averred that the plaintiffs had been given an opportunity to conduct their own valuation and the lack of a valuation report from the defendants did not forestall the necessity to carry out a sale. The defendants further stated that the sale was on as is basis based on the assessment of each buyer having viewed the premises and the assets.
13. In the process of realizing securities, valuation is important because it aids in attaining the best price for the sale and also protects against the properties being sold at a price which is not comparable to the interest in land of the same character and quality.
14. Based on the facts before Court, the receiver manager was appointed when the company fell in distress. The order for valuation was made in order to ascertain the value of the plant and machinery. The matter has taken too long to conclude. The plaintiffs could and still can carry out own valuation of the assets and seek to redeem the same.
15. With respect to the inclusion of the cost analysis for production capability the court finds that this is something the plaintiff ought to have done on its own accord and could not be burdened on the defendant.
16. On whether the time limit for 14 days be increased to 6 months, this will be a review of the orders of 24/10/2023. The plaintiffs have failed to give adequate reasons for the change to 6 months. However, aware that the properties have not yet been sold and the right to redeem is a darling of equity, the Court would accommodate the plaintiffs to some extent.
17. Being alive to the fact that the defendants are owed substantial sums, the Court declines to extend the time as sought. However, the Court orders that the plaintiffs carry out their own valuation if they so wish and give their offer to redeem. In default, the receiver may proceed to realize the securities as per the law provided.
18. In view of the foregoing, I find that the application of 2/2/2024 is partially successful and order as follows: -
 - a. The plaintiffs be given access to the properties forthwith to enable them carry their own valuation within 14 days of the date hereof.
 - b. That within 7 days thereafter, the plaintiffs do give their offer to redeem the securities, in default, the receiver to proceed to realize the securities as per the law provided

It is so ordered.

DATED AND DELIVERED VIRTUALLY THIS 21ST DAY OF JUNE, 2024.

A. MABEYA, FCI Arb

JUDGE

