



**Multiple Hauliers EA Limited v NCBA Kenya PLC (Insolvency Cause E022 of 2021)  
[2024] KEHC 10669 (KLR) (Commercial and Tax) (13 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10669 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E022 OF 2021  
A MABEYA, J  
SEPTEMBER 13, 2024  
IN THE MATTER OF MULTIPLE HAULIERS (E.A) LIMITED(UNDER ADMINISTRATION)  
AND  
IN THE MATTER OF SECTIONS 534, 537 AND  
538 OF THE INSOLVENCY ACT NO. 18 OF 2015  
AND  
IN THE MATTER OF REGULATION 102 OF THE INSOLVENCY REGULATIONS 2018  
BETWEEN  
MULTIPLE HAULIERS EA LIMITED ..... APPLICANT  
AND  
NCBA KENYA PLC ..... CREDITOR**

**RULING**

1. Sometime in June, 2021, NCBA appointed an administrator over the applicant (“the Company”). That appointment was suspended on 16/6/2021 by Okwany J who directed that the matter be consolidated with [IP E010/2020](#) in which Synergy Industrial Credit Limited had sought to liquidate the applicant.
2. The matter was placed before Majanja J, who suspended the petition for liquidation to give the company time to restructure and turn around and make proposals on how to settle its debts. Thereafter, the company entered into negotiations with its big lenders namely, NCBA, KCB, Cooperative Bank and I & M Bank with a view to seeking the best way to sort out the company’s debt.



3. The route taken by the Company was to tap in a strategic investor who would inject substantial capital which would be able to pay off a substantial part of the debt for both the secured and unsecured creditors. The negotiations took some-time and seemed to be held only between the 4 big lenders and the Company to the exclusion of the other creditors which raised serious concerns. The Court directed that the other creditors be notified of the progress of those negotiations.
4. All seemed to be well until April, 2024 when, all of a sudden, the administrators resigned. Thereafter, the 4 big lenders changed tune and stated that they had given the Company long enough and they would not support any further interim orders to sustain the Company.
5. This disclosure was made to Court on 4/6/2024. On that day, the Company informed the Court that since it had now found a serious investor, the interim orders suspending the administration and petition should be extended. The creditors opposed the same. The Court directed that the parties do file affidavits in support of their respective positions.
6. I have considered the affidavits on record. It is clear that the creditors oppose any extension of the orders. The grounds advanced is that the Company had taken too long to get any credible investor. The Company on its part contended that it now has one.
7. The Court notes that there had been a total of 3 investors who had been involved in the attempt to take over the Company and inject reasonable capital to help pay the creditors. From the record, one of the investors, Amava Group Capital (Pty) Ltd of South Africa has signed a Time-Sheet with the Company on 29/5/2024. The precondition to the time sheet is a guarantee of US \$ 8.5 M. That guarantee was given on 22/7/2024 by Aigokeros Investment Fund.
8. From the Time sheet, a strict time table has been given within which the deal is to be concluded. The time table shows the various steps that the parties are to undertake until the deal is concluded in or about December, 2024.
9. With the foregoing in mind, the question is, should the Company be given time to finalize the deal and realize the funds being injected and pay off some of the debts or should it be left to collapse? If the orders are not extended, there would be chaotic dismantling of the Company and some of the creditors will walk away completely with nothing. Further, whatever the assets would realize seem to be too little than the US \$ 8.5 M that has been guaranteed.
10. The further question that begs is, what has so radically changed that the negotiations that have been painstakingly taken for 3 years should be abruptly abandoned when a credible investor who has given a guarantee for US \$8.5 M has come knocking? The letter and the spirit of the Insolvency Act (“the Act”) is, to achieve a win-win situation for all concerned.
11. Section 522 of the Act provides: -
  - “ 1. The objectives of the administration of a company are the following:-
    - a. To maintain the company as a going concern;
    - b. To achieve a better outcome for the company’s creditors as a whole than would likely to be the case if the company were liquidated (without first being under administration);
    - c. To realize the property of the company in order to make a distribution to one or more secured or preferential creditors.”



12. It was submitted that the making of the orders sought herein is in the discretion of the Court. That however, that discretion should be exercised judiciously. The case of *Maxam Ltd & 2 Others vs. Heineken East Africa Import Co. Ltd & 2 Others* [2017] Eklr was cited in support of those submissions.
13. From my reading of section 522 of the Act, the Legislature was quite intentional. It decreed the first objective to be, to sustain the company as a going concern. I am alive that the administrators resigned. That however does not mean that the administration of the Company came to an end.
14. Section 521 of the Act provides: -
  - a. ...
  - b. ...
  - c. ...
  - d. A company does not cease to be under administration only because an administrator vacates office (Whether through resignation, death, removal or otherwise)”.
15. In view of the foregoing, I find and hold, that the provisions of the *Insolvency Act* continue to apply to the Company notwithstanding that the administrators appointed by NCBA in June, 2021 resigned in April, 2024.
16. In the case of *Maxam Ltd* (supra), it was held that, a court’s discretion is only to be exercised when there are special circumstances. The question therefore is, are there any special circumstances in this case to warrant this Court exercise its discretion in favour of the Company?
17. In this case, there have been negotiations that have been ongoing since June, 2021 between the Company and the Creditors; the negotiations have resulted in an investor being identified; the investor has given a guarantee of US \$ 8.5 M, there is a Time-Sheet that has been executed which has strict timelines. Finally, the proposed deal has a deadline of December, 2024, only 4 months away. In my view, these are special circumstances that persuade this Court to exercise its discretion in favour of the Company with a view to achieving the first objective in section 522 of the Act.
18. In view of the foregoing and having in mind that there are only four (4) months to the conclusion of the deal that would favour all the creditors, I am satisfied that this is a proper case to exercise the discretion in favour of extending the orders in force.
19. Section 606 of the Act provides that if an administrator dies, resigns, is removed from office or vacates office, he may be replaced. Under section 607, the court may replace an administrator where there is an application to the effect. However, is no such application before Court.
20. The Court has considered the affidavits sworn by the company’s director Mr. Rajinder Singh Baryan. The effect of what he states is that the status quo that has been obtaining since June, 2021 should be continued. That it is necessary for the purposes of the finalizing and concluding the coming in of the new investor to extend the status quo. The status quo had been that, the Company has been under suspended administration.
21. In view of the foregoing and the reasons I have set out above, I will treat the director’s affidavits as being made under section 607 of the Act.
22. Accordingly, I exercise my discretion in favour of the company and make the following orders: -



- a. I extend the orders in force and appoint the Official Receiver of the Republic of Kenya to be the administrator of the company.
- b. The Official Receiver is appointed strictly for the purposes of overseeing the process of completing the Term Sheet that has been executed between the Company and the investor and to oversee the smooth taking over of the Company by the new investor by December, 2024.
- c. The Official Receiver shall report to Court and advise the creditors of the progress after every 60 days. His first report to be on or before 14/11/2024.
- d. All actions against the Company are hereby stayed and suspended until further orders.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**A. MABEYA, FCI Arb,**

**JUDGE**

