



**Frank Limited & 2 others v Imperial Bank Limited (Civil Suit  
202 of 2009) [2023] KEHC 2893 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2893 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT 202 OF 2009  
DKN MAGARE, J  
MARCH 22, 2023**

**BETWEEN**

**FRANK LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**SAILES CHHAGANLAL SHAH ..... 2<sup>ND</sup> PLAINTIFF**

**CHHAGANILAL HANSRAJ SHAH ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**IMPERIAL BANK LIMITED ..... DEFENDANT**

**RULING**

1. The matter came up for hearing of the application dated 3/8/2022. The Applicant sought leave pursuant to Section 25 of the Kenya depositors *Insurance Act* and Sections 432(2) of the *Insolvency Act*. Section 432 of the *Insolvency Act* provides as follows: -

432. Consequences of liquidation order (1)

- a. 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



2. The application is unopposed. I reserved the Ruling for today at 3 pm. The Respondent is under Liquidation. However, this suit had hitherto been filed and pending in court. I have seen several Sections of the Law that put stumbling blocks to the effective access to court. These Sections are not today for Review. They are however of doubtful legally in view of Article 22 of *the constitution*.
3. Nevertheless, today my task is simple to facilitate the Applicant to proceed with the matter subject to such condition as the court may deem fit.
4. I am alive to various conflicts within the law especially between the *Insolvency Act* and the *Companies Act*, Section 409 and the Kenya Depositors *Insurance Act*. Section 409 of the *Companies Act*, provides as follows: -
  409. Creditors entitled to object to reduction
    - (1) When this section applies, each creditor of the company who, at the date fixed by the Court, is entitled to a debt or claim that, if that date were the commencement of the liquidation of the company would be admissible in proof against the company, is entitled to object to the reduction of capital.
    - (2) The Court is required to settle a list of creditors entitled to object and for that purpose it—
      - (a) shall ascertain, as far as possible without requiring an application from any of the creditors, the names of those creditors and the nature and amount of their debts or claims; and
      - b) may publish notices fixing a day or days within which creditors whose names are not entered on the list-
        - (i) can claim to have their names so entered; or
        - (ii) are to be excluded from the right to object
5. This suit predated both the insolvency and *the constitution*. There is a need to have the same concluded one way or another to enable the party to participate in liquidation as a creditor.
6. I am therefore merited to allow the application and grant leave to the Plaintiff/Applicants to continue with the suit against the Defendant in liquidation and the Liquidator on condition that the liquidator is served forthwith and not later than 30 days from today. The plaintiff shall proceed and conclude the suit within 360 days from today failing which the suit shall stand dismissed without further application.
7. Parties to file compliance documents and such amended pleadings as may be necessary to effectuate this order and prepare in readiness for hearing. The witness statements be referenced by the time of the mention for directions given after this ruling.
8. Directions shall be given immediately after this Ruling.
9. Each party to bear their own costs

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 22<sup>ND</sup> DAY OF MARCH, 2023.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**HON. MR. JUSTICE DENNIS KIZITO MAGARE  
JUDGE OF THE HIGH COURT, MOMBASA**

**In the presence of:-**



**Saringi for the Applicant**

**No appearance for the Respondent**

**Ben Wambua- court Assistant**

