



**In re Crescent Construction Company Limited (Insolvency Petition E066 of 2021)
[2023] KEHC 17566 (KLR) (Commercial and Tax) (19 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17566 (KLR)

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

INSOLVENCY PETITION E066 OF 2021

A MABEYA, J

MAY 19, 2023

**IN THE MATTER OF CRESCENT CONSTRUCTION COMPANY
LIMITED
AND
IN THE MATTER OF AN APPLICATION FOR AN ADMINISTRATION
ORDER**

RULING

1. This is a ruling on the Motion on Notice dated September 30, 2021 filed by Khatib Ashraf, a shareholder of Crescent Construction Limited (the company). The application was brought under Part VII Division 3 & 7, Sections 530, 531, 532, 558, 559 & 560 of the [Insolvency Act](#) No 0 18 of 2015, Part XI, Regulations 101A, 101B & 102 of the [Insolvency Regulations](#) 2016, The Insolvency (Amendment) Regulations 2018.
2. The orders sought in the application are spent save for a prayer to have the Court place the company under administration under section 533 (1) of the [Insolvency Act](#) and a prayer to have the director of the company to provide the administrator with a statement of affairs of the company before the administrator convenes the 1st creditors meeting.
3. The application was predicated upon the grounds that the company is technically insolvent. That the founding director, principal shareholder and managing director of the company died on March 25, 2020 and soon after, the operations of the company were grounded by mismanagement, theft by employees and third parties and creditor's claims.
4. That the company is heavily burdened to a point of near collapse under the weight of creditor's claims, both secured and unsecured, court cases, employees' salaries and logistical and operational issues. That the company's value of assets exceeds the amounts claimed by the creditors and/or liabilities. That in its present circumstances, the company is, or is likely to become insolvent and/or unable to pay its debts.



5. The applicant argued that the administration orders sought was reasonably likely to achieve the objectives of administration under section 522 of the [Insolvency Act](#) (“the Act”) which include to obtain a better outcome for the company’s creditors as a whole than would be the case if the company were liquidated; to realise the property of the company in order to make a distribution to one or more secured or preferential creditors and to rescue and maintain the company as a going concern.
6. In opposition, Kinyua & Co Auctioneers and Richfield International Company Limited, the interested parties herein filed grounds of opposition dated October 22, 2021.
7. They argued that the application was completely defective as the applicant being a shareholder or applying to protect shareholder’s rights is not amongst persons by law who may make an application in court for an Administration Order in respect of the company. That the interested party holds an unsettled decree against the company in HCC 351 OF 2013 whereby the court had made orders for the sale of a property belonging to the company in recovery of the sums owing pursuant to the said decree and which orders have not been reviewed and or set aside.
8. That pursuant to the said orders, the auctioneers had advertised and sold the property known as Land Reference Number MN/V/ 529 (Certificate of Title Number CR 15493) situated in the City of Mombasa at a public auction held on September 2, 2021 and the sale of the property was completed on the fall of the hammer and as such, the application was belated and/or the applicant was guilty of laches.
9. A shareholder by the name Mohamed Anwar Fathedin also opposed the application vide grounds of opposition filed on November 1, 2021.
10. He opposition was on the grounds that the applicant had no *locus standi* to present the application as filed as he is not a person qualified under the provisions of section 532 [1] of the [Act](#). That section 532 (1) of the [Act](#) only permits the company, the directors of the company, one or more creditors of the company to make an application for an administration order against any company. That the applicant was is neither a director nor creditor of the company and neither had he been authorised by the company to present such an application on its behalf.
11. A creditor of the company, Paramount Bank Limited, also opposed the application vide grounds of opposition dated November 26, 2021 which were the same as those of Mohamed Anwar Fathedin.
12. A director of the company, Mohamed Fizan, responded to the application via a replying affidavit sworn on February 18, 2022. He opposed the same stating that the company was in negotiations with a 3rd party bail out partner which would lead the company to meet its financial obligations and that if given time, the company would pay its debts in full which would achieve a better outcome for the company.
13. I have considered the rival depositions, the submissions and the entire record. This is an application for an Administration Order.
 14. Section 532(1) of the [Insolvency Act](#) provides: -

“An application to the Court for an administration order in respect of a company may be made only by the following persons—

 - (a) the company;
 - (b) the directors of the company;
 - (c) one or more creditors of the company



(d) a combination of persons specified in paragraphs (a) to (c);
any other person of a class prescribed by the insolvency
regulations for the purposes of this section.”

15. The applicant, Mr. Khatib Ashraf is a shareholder of the Company. He is not a director nor a creditor. At least from the record, he never purported to either. He is also not acting on behalf of the company as he has not produced a company resolution to that effect.
16. It is therefore clear to the Court that he is unqualified to apply to this Court for an Administration Orders as stipulated under section 532(1) of the Act.
17. In this regard, the application is fatally defective and untenable in law. The same is dismissed with costs to be borne by the applicant personally.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MAY, 2023.

A. MABEYA, FCIArb

JUDGE

