



REPUBLIC OF KENYA



**Cape Holdings Limited (Under Administration) v Synergy Industrial Credit Limited; I&M Bank Limited (Creditor); Registrar of Companies (Interested Party) (Insolvency Cause E049 of 2021) [2023] KEHC 20401 (KLR) (Commercial and Tax) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20401 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E049 OF 2021**

**A MABEYA, J**

**JUNE 16, 2023**

**BETWEEN**

**CAPE HOLDINGS LIMITED (UNDER ADMINISTRATION) ..... APPLICANT**

**AND**

**SYNERGY INDUSTRIAL CREDIT LIMITED ..... RESPONDENT**

**AND**

**I&M BANK LIMITED ..... CREDITOR**

**AND**

**THE REGISTRAR OF COMPANIES ..... INTERESTED PARTY**

**RULING**

1. On October 12, 2023, I & M Bank appointed Ms. Vruti Shantil Shah the administrator of Cape Holdings in exercise of its powers under a floating charge. After 12 months, the Administrator came to Court seeking extension of her term for another 12 months.
2. In her application for extension dated September 19, 2022, she told the Court that she needed the extension so that pending cases in the Court of Appeal, High Court and Tribunals may be concluded. The Court declined the request vide its ruling of June 9, 2023. She has appealed against the decision to the Court of Appeal vide Nairobi Civil Appeal No 415 of 2023.
3. Contemporaneous with the filing of the appeal, the Administrator has triggered the jurisdiction of the Court of Appeal for granting stay. That is in perfect compliance with my orders of June 9, 2023 by which I suspended my order declining to extend the administration for 7 days. She has now approached



the Court seeking the extension of the stay or maintenance of the status quo ante pending the exercise of the wisdom of the three Judges of the Court of Appeal.

4. My understanding of stay jurisdiction is that, it is exercised to avoid a situation where a party may suffer substantial loss as a result of denial of a stay order. In the present case, what will be the effect of granting or declining to grant the stay order sought?
5. As at the time I declined to grant the extension of the administration on June 9, 2023, the same had been in force for over 19 months. The law presupposes that an administration be in force for only 12 months. I did indicate the spirit behind that provision in the impugned ruling and I need not repeat it here.
6. In this case, the administration was triggered not because of any default on the part of the Company to service its debts, but because of what I & M Bank explained in the Replying Affidavit of Peris Wairimu Chege of October 25, 2022 to be as follows: -
  - “7. That the execution of a trial judgment or order against the assets of the Company was one of the events of default that would trigger the automatic crystallization of the Debenture as provided under clause 21 of the Debenture.
  8. That the Bank was therefore justified in appointing the Administrator pursuant to the provisions of clause 14 of the Debenture.”
7. It is therefore very clear that the administration was occasioned by the threat of attachment of the Company Assets due to some final judgment that had been entered against the Company. Indeed, that may have been the purpose of the administration because, as the Court wondered in the impugned ruling, the Administrator did nothing during the 12 months of the administration. Her inaction is explained by paragraph 10 of Peris Wairimu Chege’s Replying Affidavit aforesaid wherein she stated: -
  - “10. That on 1<sup>st</sup> April, 2022 the Court of Appeal in Civil Appeal (application) No E 459 of 2021 and CIVIL Appeal (Application) No. E 788 of 2021 stayed the Orders issued by this Court on 10/12/2021 allowing execution of the decree in HC Misc No. 126 of 2015 pending the hearing and determination of the Appeals filed by the Bank and the Administrator, respectively.”
8. From the foregoing, the threat for which the administration was triggered has been contained. I am informed that the Court of Appeal has yet again stamped its authority on June 9, 2023 by declining to set aside the said stay. That stay shall continue until the Appeals are determined by that harrowed Court and the Company shall be safe.
9. With the threat being neutralized, will there be substantial loss to be suffered if the status quo Ante is not ordered. I don’t think so. Once this Court determined that the extension of the administration would serve no purpose, it became *Functus Officio* as far as the administration of Cape Holdings Ltd is concerned.
10. I have looked at the provisions of sections 593 and 594 of the [Insolvency Act](#). This Court had extended the administration from October 12, 2021 to June 9, 2023. What I did on 9/6/2023 was to terminate the term of the Administrator but had it suspended the same up to today. I do not think the Insolvency Court having terminated an administration has power/jurisdiction to extend the same in view of the express provision of section 594 2(b) of the [Insolvency Act](#).



11. I agree with Mr Gachuhi Learned Senior Counsel for the applicant that the High Court can apply the principle in the Errinford Properties Case, that is dismiss an application but still grant a stay to give the Court of Appeal an opportunity of pronouncing itself in the matter. However, that I think is not applicable here. That principle is applicable by virtue of the application of the common law principles which cannot unseat an express provision of the law.
12. In the present case, once an Insolvency Court brings an end the term of an administration for any reason, that Court cannot extend the same as provided for under section 594 (2) (b) of the *Insolvency Act*. I once again reiterate that what I did on June 9, 2023 was to suspend the termination of the administration to today to allow the Court of Appeal jurisdiction to be invoked. I cannot now purport again to extend the term which has already ended.
13. Accordingly, I see no substantial loss to be suffered as the Court of Appeal has stayed all executions against the Company. Secondly, this Court is *Functus Officio* in matters of administration of Cape Holdings. The prayer sought is therefore declined.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JUNE, 2023.**

**A MABEYA, FCIarb**

**JUDGE**

