



**I &M Bank Limited v Desire Flora (K) Limited (Insolvency Cause E024 of 2023)  
[2024] KEHC 13642 (KLR) (Commercial and Tax) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13642 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E024 OF 2023**

**A MABEYA, J**

**NOVEMBER 7, 2024**

**IN THE MATTER OF DESIRE FLORA KENYA LIMITED**

**AND**

**IN THE MATTER OF SECTIONS 534, 535 & 604 OF THE INSOLVENCY ACT**

**BETWEEN**

**I &M BANK LIMITED ..... APPLICANT**

**AND**

**DESIRE FLORA (K) LIMITED ..... RESPONDENT**

**RULING**

1. This ruling determines the application dated 20/6/2024 for extension of the term of administration. The application is brought under Article 159 of *the Constitution* of Kenya 2010, section 1A, 1B and 3A of the *Civil Procedure Act*, section 522,573,579, 580,593 and 594 of the *Insolvency Act* no 18 of 2015, Order 50 rule 6 and order 51 rule 1 of the civil Procedure rules 2010.
2. It seeks that the term of the Administrator Mr. Madhav Sudir Bhandari be extended for a further period of 12 months from 30/12/2024 to allow completion of the administration of the company
3. The application is supported by the grounds on the face of it and the supporting affidavit of the administrator sworn 20/6/2024. It was stated that the company was placed under administration on 30/6/2023 by the bank for being unable to pay the debts and the administrator was appointed. That the company directors challenged the appointment of the administrator and the application to that effect was before this Court pending determination. According to the applicant, the administrator was reinstated by the Court on 5/10/2023 and therefore the administrator was yet to complete the statutory term of 12 months.



4. That the administrator had filed all reports regarding the financial position of the company and had been actively defending suits against the company under administration. That he had taken action towards the realization of the debts including issuance of the statement proposals to the creditors, securing the assets of the company, taking care of the animals by providing vaccinations and medications as well as the appointment of the valuation experts for purposes of undertaking a valuation.
5. He further contended that he had prepared an expression of interest document circulated to various potential investors as well as written to the union to request all share claims of the members. That the company was yet to be able to fully pay its debts and it was in the interest of all the stakeholders to have the administration extended.
6. The application was opposed by the directors of the company vide a replying affidavit of Mahesh Halal sworn on 12/7/2024. He stated that, prior to administration, the company was engaged in the business of exportation of flowers for more than 15 years. That the main objective of administration was to keep the company as a going concern for the benefit of the creditors. That since the administration commenced, many of the operations of the company had been grounded and the farm equipment were stolen or assets damaged.
7. It was contended that the administrator had failed to pay electricity bills for the firm leading to the disconnection of power. That this affected the irrigation system and the crops planted on the farm to dry up. That one of the cows died and the remaining 23 were sold at an undervalue for Kshs. 669,000/-. That these proceeds were forwarded to the bank to the detriment of the other creditors. That the business permits and certifications have not been paid for and the company stands to be charged stiff penalties. The director further faulted the administrator for failing to file tax returns and as a result there was an accrual of interest and penalties. According to the directors, the administrator's failure and mismanagement has caused it to lose business opportunities to its competitors
8. In rebuttal, the administrator a further affidavit sworn on 3/10/2024. He stated that the company had already been grounded to a halt and the firm was in a dilapidated state prior to the administration. That the company was operating at a loss and it was being funded by a sister company to the detriment of creditors in both companies. He denied shutting down the company and averred that he had been seeking funding from various financial institutions to support the company.
9. With respect to the cows, he stated that the income derived from selling the milk was Kshs. 21,100/- from December to February and that was not enough to cover the costs for upkeep of the cattle. He further averred that he issued a statement of proposal to all creditors including the directors.
10. Parties canvassed the application by way of written submissions which I have considered. The Court is called upon to determine whether the period of administration should be extended.
11. The objectives of administration are set out in section 522 of the *Insolvency Act* ("the Act") to be as follows: -
  - "(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. The time limit for the administration of companies is set at 12 months. However, the Act provides for an extension of up to 6 months if certain conditions are met. The Courts have made it clear that this extension is not automatic; it requires the court's discretion based on evidence and the specific circumstances surrounding the company's administration.

13. In *Kimeto & Associates Advocates v KCB Bank Kenya Limited & 2 others (Insolvency Petition E004 of 2021)*, while considering removal of an Administrator, the court observed: -

“When the Legislature enacted the *Insolvency Act*, 2015, it made it clear what the objectives of the Act are. They are clearly set out in section 522 of the Act. In this regard, all decisions made by the Insolvency Court as relates a company under administration must align to the said objectives. As a child is to a Family Court, so is a company under administration to the Insolvency Court; every decision must be made in the best interest of that company.... In this regard, an administrator must at all times align his decisions and actions with the best interest of the company. His duty and loyalty goes beyond the debenture holder who appoints him as such or as receiver. He must undertake his role in a manner that promotes the company as a going concern, where possible, to enable it repay off its debts and be discharged from administration and receivership.”

14. In *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 18685 (KLR), the court stated that: -

“The totality of the foregoing is that, the power to extend administration is in the discretion of the Court. However, like all other discretions, the same must be exercised judiciously. The court will examine the purpose for which the extension is sought. The extension should be for the furtherance of the objectives of administration. That the administrator must be able to show the Court what he/she has done for the period of administration to justify the extension sought. What must have been done should be in tandem with the objectives of administration.”

15. In *Re Nortel Networks UK Ltd* [2017] EWHC 3299 (Ch), Snoden J held that: -

“The Court's discretion under paragraph 76(2)(a) is not circumscribed in any express way, but it is readily apparent that it should be exercised in the interests of the creditors of the company as a whole, and that the Court should have regard to all the circumstances, including (i) whether the purpose of the administration remains reasonably likely to be achieved, (ii) whether any prejudice would be caused to creditors by the extension, and (iii) any views expressed by the creditors. In that regard, where a company is making distributions to its unsecured creditors within the administration process, it is likely to be appropriate that the administrator's term of office should be extended to allow the distributions to be made, rather than to require the company to go into liquidation, which might well increase the costs or delay the distribution process with no countervailing benefit.”



16. And in *Cytonn High Yields Solutions LLP (In administration) v Official Receiver (Insolvency Petition E063 of 2021) [2023] KEHC 16 (KLR)*, while considering whether to extend an administration, the Court stated: -

“From the foregoing, it is clear to this court that the actions and inactions of the administrator were not in the best interest of the creditors. They were contrary to the objectives of the Act. The administrator was more shielding the promoters of the company than acting in the best interest of the company and the creditors. In delaying to recover what was owed to CHYS, that was highly prejudicial to the creditors....In the present case, the administrator has confessed that he has been unable to realize and recover the loan notes. All he has as assets for the company are loan notes (mere pieces of paper he’s been unable to enforce?). In my view, under the common law doctrine of tracing, the creditors would be entitled to trace their funds into these projects. Let those properties be conserved/protected awaiting the realization of the assets of CHYS. Ruling otherwise would be to abate a possible fraud upon the creditors. This would be so because, the so SPVs may dispose of those projects to the extreme prejudice of the creditors whose monies was used to acquire them....I have come to the conclusion that, the creditors interests was not taken into account and the administration is still under the initial stages. No satisfactory explanation has been given for the inordinate delay. By virtue of section 580 of the Act, the administrator had the power to take any action which was likely to contribute to the effective and efficient management of the affairs and property of CHYS. He has not performed his said duty to the satisfaction of the court.”

17. From the foregoing, in an application for extension of administration, consideration should be placed on the objectives of administration. The administrator must demonstrate that he has actively pursued the objectives of administration. He should also demonstrate that an extension will be towards realization of the objectives. In this regard, there should be reports on the company status or any restructuring efforts and how the same is to impact on the company and its creditors.
18. Applying the above principles to this case, the administrator stated that he had issued statement proposals to known creditors, secured the assets of the company by providing security, given medication to the animals on the farm, took an evaluation of the financial position of the farm and looked for investors to purchase the business or assets of the company.
19. This position was challenged by the company directors who stated that the company ceased operations once the administrator came on board. This was attributed to the administrator’s refusal to pay electricity bills leading to disconnection and consequently shut down of the irrigation system. Further, the directors contended that the administrator had sold cows at an undervalue and expelled the staff who were working for the company.
20. The beginning point is that, none of the creditors opposed the application for extension. Secondly, for the company to have been placed under administration, it must have been due to the inability of its directors to prudently run the company thereby driving it into financial mess. Further, the Court takes notice that after his appointment, the administrator was delayed in taking up his office due to an injunction that had been obtained by the directors of the company against the debenture holder.
21. Administration serves as a method of trying to rescuing a company from certain death. It is aimed at stabilizing a company’s operations and ultimately benefit both the company and its creditors. While the company seeks to regain its footing under administration, it is not expected to operate optimally as it



previously did. There must be efforts to explore potential rescue options, with the understanding that if recovery is not feasible, liquidation may be the final outcome at the end of the administration term.

22. From the forgoing, I find that the protestations by the directors, who may be the cause of the company's woes, are not compelling. The administrator has made a case for the extension of his term.
23. I find the application for extension for administration merited and the same is allowed. The administration period is hereby increase for a further 12 months from the date of this ruling.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

