



Nthiwa & Others v Mastermind Tobacco (K) Limited (Under Administration) (Miscellaneous Application E578 of 2024) [2024] KEHC 13611 (KLR) (Commercial and Tax) (5 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E578 OF 2024**

**JWW MONG'ARE, J
NOVEMBER 5, 2024**

BETWEEN

FAITH MBINYA NTHIWA & OTHERS APPLICANT

AND

MASTERMIND TOBACCO (K) LIMITED (UNDER ADMINISTRATION) RESPONDENT

RULING

1. The Applicant filed the Notice of Motion dated 17th July 2024 seeking orders that court grants leave to the Applicant to file a suit against the Respondent herein, a company under administration, for the purpose of recovering outstanding rent arrears and accrued interest.
2. This Application was supported by the grounds on the face of it and by the sworn Affidavit of Faith Mbinya Nthiwa who stated that the Respondent was placed under administration by I&M Bank on 14th December 2023.
3. A brief background to the suit is that on or about 1st November 2012, the Applicants and the Respondent entered into a 5 years and 3 months lease (1st Term) for the whole of that parcel of land known as L.R NO. 12715/605 Syokimau, yielding annual rent of Kshs.3, 600, 000 for the 1st year which rent would escalate at the rate of 10% annually such that by expiry thereof on 31st January 2018, the rent stood at Kshs.439, 230 per month.
4. Subsequently and during the course of the 1st term, the Respondent was required to pay a total sum of Kshs.23, 328, 992 out of which it paid Kshs.14, 247, 678, leaving an outstanding balance of Kshs.9, 081, 314 due and owing. Following the expiry of the 1st term, the Respondent declined to execute a



fresh lease but remained in possession on a month-to-month tenancy which culminated in the renewal of the lease on 1st February 2018 for a 2nd term.

5. The Respondent was served with the pleadings in the present suit and the application herein but failed to file any response. Because the Company is under receivership, the Applicant has moved the court seeking leave to institute proceedings against the company while its under administration.
6. Having carefully considered the application as filed and the supporting documents I note that the only issue that this court is called to consider is “whether leave should be granted for the Applicants to institute proceedings against the Respondent while under administration.”
7. It is undisputed in this case that the Respondent Company was placed under administration, no proceedings could be validly undertaken against the Respondent prior to obtaining the leave of the Court. The position is buttressed under Section 560(1) of the [Insolvency Act](#), which provides: -
 - (1) While a company is under administration—
 - (d) a person may begin or continue legal proceedings (including execution and distress) against the company or the company's property only with the consent of the administrator or with the approval of the Court.”
8. The import of the above provision is to ensure that a company under administration is not subjected to a multiplicity of actions which may be sometimes unnecessary, taking the administrator’s attention and available funds away from the orderly administration thereof.
9. In the instant case the Applicants have explained that there are outstanding rent arrears of Kshs.16, 458, 397 and accrued interest of Kshs.11, 848, 286 owed by the Respondent which the Applicants can only recover by instituting legal proceedings against the Respondent. The Respondent having been served did not file any response thereto in opposition or otherwise.
10. In light of the above, the court finds that the Applicants have a legitimate interest against the Respondent arising from the claim for rent arrears. Therefore, it is my finding that this Application is merited and the said Application is hereby granted with the effect that leave of the court is granted to the Applicants to continue the proceedings against the Respondent which is under administration. There will be no orders as to costs

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY this 5TH DAY OF NOVEMBER 2024.

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J W W MONGARE

JUDGE

In The Presence of

1. Mr. Linet Chamia for the Applicants
2. N/A for the Respondents
3. Amos - Court Assistant

