



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

INSOLVENCY CAUSE NO. E013 OF 2018

ALLIED E.A. LIMITED.....DEBTOR

VERSUS

I& M BANK LIMITED.....CREDITOR

RULING

1. The application before me is the Notice of Motion dated 6th may 2020. It is filed by the **African Banking Corporation** (ABC). By that application ABC seek the prayer for the administration of Allied E.A. Limited (the Company) by **P.V.R. Rao** (Rao) be vacated and or terminated forthwith. The application is brought under the provision of Sections 593, 594(1) (b) and 597 of the Insolvency Act 2015 (the Act).

2. The application is predicated on the grounds that **Julius Mumo Ngonga** and **Anthony Makenzi Muthusi** were appointed as administrators over the whole property of the Company on 19th November 2018 by ABC, the court through an order of 30th November 2018 removed the joint administrators appointed by ABC, and the court through the order of 4th December 2018 appointed Rao as an interim Administrator of the company. That since 4th December 2018, more than one year ago, Rao has been the sole administrator over the company. That no application has been made under Section 594 (1) of the Act has been made for the extension of Rao's administration.

3. The application is supported by **First Community Bank**.

4. I&M bank (I&M) have opposed the application. I&M submitted that it was under their application dated 27th November 2018 that Rao was appointed. The opposition by I&M is on the grounds that the Administrators appointed by ABC were not removed but that rather they were restrained from performing their duties while Rao was on an interim basis appointed an administrator. That the appointment of Rao was an interim measure to look after the affairs of the company in the interim period while the parties awaited the court's Ruling on the pending application dated 27th November 2018. That Rao could not undertake any substantive responsibility when the court was yet to Rule on the pending application.

ANALYSIS AND DETERMINATION

5. ABC has moved the court under the provisions of section 594 of the Act and I will proceed to reproduce sections 593 and 594 for better understanding, as follows:

593. The appointment of an administrator automatically ends at the end of twelve months from and including the date on which it took effect.

594. (1) Despite section 593-

(a) on the application of an administrator, the Court may by order extend the administrator's term of office for a specified period; and

(b) an administrator's term of office may be extended by consent for a specified period not exceeding six months.

(2) An order of the Court made under subsection (1)(a)-

(a) may be made in respect of an administrator whose term of office has already been extended; but

(b) may not be made after the administrator's term of office has ended.

6. ABC argued that Rao having been appointed under the provisions of Section 612 of the Act it is clear that the term of Rao ended as provided under section 593 of the Act. ABC refuted the argument raised that, because Rao was an interim administrator he had no obligation to seek extension of his term. According to ABC this court's hands are tied and the court is bound to follow the law and the provisions of the Act. That such removal of Rao will not leave a vacuum in the running of the Company because once the term of Rao is terminated the Administration of the company will revert back to where it was before the restraining orders.

7. The view of First Community Bank is that that once the court grants the order sought by ABC the court should then apply its mind by reinstating the previous Administrators.

8. I wish to begin by considering the application by looking at the objectives of an Administration. Those objectives are to be found in section 522 of the Act. The objectives are, inter alia, to maintain the company as a going concern, to achieve a better outcome for the company's creditors and to realise the property of the company in order to make distribution to one or more secured or preferential creditors.

9. The order of 3rd December 2018 (and not the 4th December 2018 as stated by the parties) was the following effect:

THAT pending the hearing and determination of this application (one dated 27th November 2018) P.V.R. Rao or the Government Official Receiver Mark Gakuru be and are hereby appointed to act as an interim Administrators of Allied E.A. Limited (in administration). That the administrators do file reports every two weeks to the court in respect to the affairs of Allied E.A. Limited (in administration)

That in my view is what Rao was appointed to do in the interim.

10. That application dated 27th November 2018 has not been heard inter partes and the interim order have continued to be in place to date.

11. What then is the implication of that interim order and does the provisions of section 593/594 apply? **The Black's Law Dictionary tenth edition** defines interim order as:

A temporary court decree that remains in effect for a specified time or until a specified event occurs.

12. I am persuaded by the argument of I&M that Rao being an interim administrator the provisions of section 594 requiring him to extend his term after twelve months does not apply. His term after all is liable to be terminated any time, if the court finds it just to do so after the court hears the pending application inter partes. His term is Interim.

13. What is of concern to this court is that that pending application was directed to be heard by written submissions but the parties herein as from May 2019 informed the court that there were negotiations going on. Those negotiations, as the court record shows continued until November 2019 when it was reported to the court that the discussions had broken down. If that be the present position, and from the present arguments before me I gathered it is so, I do order that the pending application to set down for hearing. In my view it is not healthy for a company to have interim administrator running its affairs endlessly.

CONCLUSION

14. In the end the Notice of Motion application dated 6th May 2020 is dismissed with no orders as to costs. In order to ensure that the situation of administration of the company does not continue endlessly, in the interim status, I will hereby review the court's order of 3rd December 2018 as follows:

Unless there is an extension or other order of the court P.V.R. Rao shall continue as the interim administrator of Allied E. A. Limited (in administration) for only six months from today.

DATED, SIGNED and DELIVERED at NAIROBI this 8th day of JULY 2020.

MARY KASANGO

JUDGE

Before Justice Mary Kasango

C/A Sophie

For the Debtor:

For the Creditor:

For First community Bank:

ORDER

This decision is hereby virtually delivered this 8th day of July, 2020.

MARY KASANGO

JUDGE