



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**INSOLVENCY PETITION NO. 10 OF 2017**

**IN THE MATTER OF NAKUMATT HOLDINGS LIMITED**

**AND**

**IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015**

**AND**

**IN THE MATTER OF AN APPLICATION FOR AN ADMINISTRATION ORDER**

**BY**

**PRIMROSE MANAGEMENT LIMITED.....1<sup>ST</sup> APPLICANT**

**SUNMATT LIMITED.....2<sup>ND</sup> APPLICANT**

**COMPULYNX LIMITED.....3<sup>RD</sup> APPLICANT**

**JADE CONCEPTS LIMITED.....4<sup>TH</sup> APPLICANT**

**-VERSUS-**

**NAKUMATT HOLDINGS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**GC RETAIL LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. I have before me two applications. One is dated 21<sup>st</sup> March 2019 filed by the Administrator of NAKUMATT HOLDING LTD (NHL). The second application is filed by one of NHL Creditors, namely C. K. Patel Limited.

2. The application by NHL is for orders that the Court do receive and accept recommendation made in the Administrator's report; the Court direct the Inspector General of Police to provide adequate security at NHL's branches; the Court do allow the Administrator to revise his proposals and reconvene another Creditor's meeting; the Court do allow the Administrator to conduct an audit of the NHL's financial position; the Court to segregate Creditors and execute voting rights in terms of the value/category because mass decisions are impractical; in alternative the Court to allow the Administrator to reconvene and complete the adjourned First Creditor's meeting; and the Administrator be granted leave to file contempt proceedings against landlords who have refused to return premises to NHL.

3. This Court on 22<sup>nd</sup> January 2018 appointed Peter Obondo Kahi as the Administrator of NHL. The Administrator on 14<sup>th</sup> March 2018 convened the Creditor's meeting and it is not disputed that the Creditors did not vote on the proposals made by the Administrator. From the various affidavits I have read, it has become clear that the Creditors, present at the meeting, were dissatisfied with the information provided and the conduct of that Creditor's meeting.

4. I have considered all the affidavits in opposition and the report presented to Court by the Administrator. It is clear that the indebtedness that NHL is facing is enormous. Since the Administrator's report was prepared, in March 2018, many adverse changes have occurred against NHL, which changes are in the public domain. Some of those changes is that one of the existing branch of NHL, Ukay branch, was

demolished by the Government for encroaching riparian land; and secondly a major investor namely Tusky's declined to invest in NHL.

5. The Administrator by his report stated that on being appointed, he took charge of NHL; he engaged shareholders, banks with a view to obtaining short term working capital; developed a financial model for the business; re-evaluated revenue and potential of each branch; re-evaluated right sizing in view of reduced; evaluated debt sustainability of the company, amongst others.

6. The Administrator swore another affidavit dated 2<sup>nd</sup> July 2018. In that affidavit, he attached schedules of payments made to employee up to May 2018, and payments made to various landlords. Of interest is that C. K. Patel was paid, by the Administrator, up to June 2018 Kshs. 26,166,854.

7. My consideration of the various affidavits and submissions filed by the parties is that the Administrator need to be given some more time to try and achieve the statutory responsibility on him, by virtue of the Insolvency Act and also the responsibility that this Court places on his shoulders. In my view, there is need at this time for Creditors to have some patience.

8. Even in the Court granting the Administrator extension of his term it is necessary to remind him that an Administration is not intended to be prolonged and the purpose for which he was appointed are well set out in Section 552 of the Insolvency Act as follows:

***“(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.”***

9. Having reached a conclusion that he Administrator's term be extended, it follows that for him to be effective in his mandate the application by C. K. Patel cannot be allowed. By their application, they sought orders NHL's lease at L. R. NAKURU MUNICIPALITY BLOCK 4/456 be declared forfeited and that the Court do order NHL to vacate the premises thereof.

10. As stated before the Administrator paid C. K. Patel's rent, for those premises up to June 2018. There is, therefore, in my view no reason at this stage to grant the orders sought.

11. In the end the orders of the Court are:

**a) The Notice of Motion dated 15<sup>th</sup> May 2018 filed by C. K. Patel is dismissed with no orders as to costs.**

**b) The appointment of Peter Obondo Kahi is hereby extended for a period of 12 months from the 22<sup>nd</sup> January 2019.**

**c) The Administrator shall conduct the financial position of Nakumatt Holding Limited within four (4) month from today.**

**d) The audit firm shall be competitively sourced by the Administrator.**

**e) Those accounts shall inform the Creditors meeting whereby the Administrator shall present a report to the Creditors. Such a meeting shall be held within six (6) months from today.**

**f) The Administrator shall within one (1) month after the Creditor's meeting report any decision of the meeting to the Court.**

**g) There shall be no costs to the Notice of Motion dated 21<sup>st</sup> March 2018.**

**h) All other pending applications are hereby stayed until further orders of the Court.**

Orders accordingly.

**DATED, SIGNED and DELIVERED at NAIROBI this 5<sup>TH</sup> day of MARCH, 2019.**

**MARY KASANGO**

**JUDGE**