

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISC. CIVIL APPLICATION NO.44 OF 2019

THOMAS KIMAGUT SAMBU.....PLAINTIFF/APPLICANT

VERSUS

MUHORONI SUGAR CO. LTD

(UNDER RECEIVERSHIP.....1ST RESPONDENT

FRANCIS OOKO (JOINT RECEIVER MANAGER)2ND RESPONDENT

HARUN KIRUI (JOINT RECEIVER MANAGER).....3RD RESPONDENT

RULING

1. This is an application brought by way of Notice of Motion dated 17th June 2019 by Thomas Kimagut Sambu through counsel M/s Migiro & Company Advocates.
2. The application was brought under section 228 of the Companies Act, and section 1A, 1B, and 3A of the Civil Procedure Act (Cap 21) and Order 51 of the Civil Procedure Rules. It is an application seeking this court's leave to institute proceedings against Muhoroni Sugar Company Limited under receivership.
3. The application is based on grounds on the face of motion that the applicant was a sugarcane farmer who had supplied 47.36 tonnes to the factory valued at Kshs.161,000/= which the 1st respondent and its receiver managers the 2nd and 3rd respondents had not settled.
4. The application was filed with a supporting affidavit sworn on 17th June 2019 by the applicant amplifying the grounds of the application.
5. It is an ex-parte application which is not opposed. Mr. Mugumya who appeared in court for the applicant relied on the case of **George Mureithi and Others – vs- Kenatco Taxis Limited** in receivership – Nairobi Employment and Labour Relations Court Cause No.507 of 2013 [2016]eKLR in which the court dismissed a suit instituted without obtaining such leave.
6. This application is based on section 228 of the Companies Act, which states as follows;

“228: When a winding up order has been made or an interim liquidator has been appointed under section 235, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose”.
7. With the documents and facts placed before me, I am of the view that it has been demonstrated that the company has been put under liquidation. Thus, if the applicant wishes to institute any court proceedings against the company and its liquidators leave of this court has to be sought and granted.
8. I thus allow the application and grant the applicant herein leave to commence court proceedings against the respondents as sought. Costs in the cause.

Dated and delivered at Kericho this 22nd October 2019.

GEORGE DULU

JUDGE