



**Oliech v Komaza Forestry Limited (Under Administration) (Employment and Labour Relations Cause E001 of 2023) [2024] KEELRC 2302 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2302 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E001 OF 2023**

**M MBARŪ, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**ALLAN OCHIENG OLIECH ..... CLAIMANT**

**AND**

**KOMAZA FORESTRY LIMITED (UNDER  
ADMINISTRATION) ..... RESPONDENT**

**RULING**

1. The respondent/applicant and Komaza Forestry Limited (Under liquidation) filed an application dated 15 May 2024 seeking to stay the suit against the respondent pending the hearing and determination of the impending appeal.
2. The application is supported by the Affidavit of Anthony Makenzie Muthusi and on the basis that the claimant filed the Statement of Claim on 9 February 2023 but on 1<sup>st</sup> November 2023 in Insolvency Cause No.E144 of 2023, the respondent company was placed under Administration and Julius Mumo Ngonga and Anthony Makenzi Muthusi were appointed as joint administrators over all the assets and undertakings of the company.
3. Section 560(1) (d) of the *Insolvency Act* places a moratorium over all proceedings while the Administration is in effect except with the consent of the Administrator or the approval of the court that issued the Administration Order. By Gazette Notice No.1489 dated 3 November 2023, the appointment of joint administrators was published and parties with a claim against the respondent were invited to submit their claims against the respondent but the claimant failed to comply. The respondent filed an application dated 9 February 2024 seeking a stay of proceedings to allow administration to be concluded and in a ruling delivered on 26 April 2024 the court dismissed the application.



4. The respondent is aggrieved by the ruling and has filed a Notice of Appeal. The intended appeal has a high chances of success and unless proceedings herein are stayed, the appeal will be rendered nugatory.
5. In reply, the claimant filed his Replying Affidavit on the grounds that the instant application is similar to the application dated 9 February 2024 and the court delivered a ruling on 26 April 2024. The same court cannot litigate or address a similar matter and cannot act as an appellate court over its ruling. The issue having been addressed with finality, is to file a similar application, the same is res judicata.
6. The claimant avers that Section 560A of the *Insolvency Act* gives conditions to be taken into account by the court or an administrator before approving the continuance of a suit against a company which is under statutory management. One such condition includes whether the claimant is likely to suffer significant loss and the legitimate interest of the claimant and the legitimate interest of the creditors of the company, giving the right of priority to the proprietary interest of the applicant. The claimant has a legitimate interest and unless secured will suffer loss. Upon a judgment herein, such rights and interests will be determinable and an order thereof placed with the Administrators.
7. The claimant avers that the respondent has not sought leave to appeal against its order under the provisions of Order 43 rule 3 of the Civil Procedure Rules and the Notice of Appeal is defective. The application should be dismissed with costs.

**Both parties attended and filed written submissions.**

8. The application, affidavits and submissions are considered and the single issue for determination is whether an order of stay of the suit pending a hearing of its intended appeal should issue.
9. The respondent as the applicant has acknowledged that on 26 April 2024, the court delivered its ruling herein with regard to an application dated 9 February 2024 where the respondent was seeking orders that there be stay the suit against the respondent until the conclusion of its administration under Section 560(1) of the *Insolvency Act*, 2015.
10. This application was dismissed. There are reasons given for the dismissal.
11. The respondent in the instant application is seeking to stay the suit against the respondent pending the hearing and determination of the impending appeal.
12. The reasons given are similar to those outlined in support of the application dated 9 February 2024. Even though the stay of suit herein sought is to allow for an impending appeal, the purpose is to allow the administration process to commence upon Gazette Notice No.1489 dated 3 November 2023 and the appointment of joint administrators to conclude. The issue by the respondent is that upon the publication of this notice, the claimant failed to file any claim against the company.
13. This purpose is addressed conclusively in the ruling herein delivered on 26 April 2024.

**Should these proceedings be stayed to allow for an impending appeal?**

14. The Notice of Appeal is indeed an indication of an intention to proceed on appeal. The court has declined a stay of proceedings. To circumvent such an order through an application seeking a stay of the suit for impending appeal would negate the ruling delivered on 26 April 2024. There is no appeal filed.
15. Having expressed itself on the issue of stay of proceedings, to stay the proceedings herein for the impending appeal would not aid justice but circumvent justice. On stay of proceedings, the court is functus officio.



16. The result of this application was to frustrate the hearing scheduled on 24 May 2024. A new hearing date will be issued.
17. Application dated 15 May 2024 is without merit and is hereby dismissed. Costs to the claimant. A hearing date is to be issued.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 26 DAY OF SEPTEMBER 2024.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**

Court Assistant: Japhet Muthaine

..... and .....

