



**Njoroge v Karuri & another (Suing as the Legal Representatives
of the Estate of David Mburu Karuri - Deceased) (Civil Appeal
14 of 2019) [2025] KEHC 13682 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13682 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL 14 OF 2019
RC RUTTO, J
SEPTEMBER 30, 2025**

BETWEEN

ANNE MUTHONI NJOROGE APPLICANT

AND

STEPHEN WAWERU KARURI 1ST RESPONDENT

ALICE WAMBUI KARURI 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF DAVID
MBURU KARURI - DECEASED**

RULING

1. Before this court for determination is a Notice of Motion dated 22nd May 2025. The applicant invokes the provisions of sections 1A, 1B, 3A and 79G of the *Civil Procedure Act*, Order 32, Rule 10 and order 51(1) of the Civil Procedure Rules and section 432(2) of the *Insolvency Act*. She seeks the following orders:
 1. This Honourable Court be pleased to grant a stay of the legal proceedings currently pending and/or intended against the Applicant (being an insured of Resolution Insurance which is currently under temporary liquidation) in this court pursuant to Section 432(2) of the *Insolvency Act*, 2015;
 2. The stay of proceedings to remain in force for the duration of the temporary liquidation/ permanent liquidation of the Company or until further orders are issued by the court that placed Resolution Insurance under temporary liquidation in HCCOMMIP/E077/2023;
 3. Costs of this application be provided for.



2. The application is supported by the grounds set out on its face and by the supporting affidavit of Tom Odhiambo, an advocate of the High Court of Kenya practicing under the name and style of OMW Advocates acting for the applicant. The crux of the application is that the applicant is a policyholder and insured party under an insurance contract with Resolution Insurance which was duly licensed and operational until 21st December 2023 when the court issuance of a temporary liquidation order in HCCOMMIP No. E077 of 2023. A provisional liquidator was subsequently appointed to manage the company's affairs.
3. The applicant contended that she is a party to proceedings currently pending the court in which Resolution Insurance company is a necessary party either as a direct defendant or the insurer obligated to indemnify the applicant. In that regard, she urges that continued prosecution of the suit would adversely affect and undermine the integrity of the insolvency process, particularly the rights of creditors and the role of the liquidator.
4. The applicant further submitted that, under section 432(2) of the [Insolvency Act](#), once liquidation proceedings commence, no legal proceedings may be initiated or continued against the company or its property without leave of court. She therefore urges that a stay of proceedings is necessary to preserve the subject matter of the liquidation, prevent duplication of claims, and allow the liquidator to administer the company's affairs fairly and in accordance with the law. She emphasized that any civil action during liquidation must be pursued with leave obtained through the liquidator.
5. The applicant also notes that the current proceedings before this court stem from an appeal filed by the respondents, which succeeded due to her failure to enter appearance, resulting in a default judgment. She states that Resolution Insurance subsequently settled the decretal amount awarded by the trial court in full and was placed under temporary liquidation shortly thereafter.
6. The applicant prayed that this application be allowed urging that unless stay orders are not granted, she stands to suffer irreparable prejudice. Specifically, she contends that she would be denied indemnity under her insurance contract with Resolution Insurance, or alternatively be exposed to liability contrary to the terms of the policy. She maintains that the application was made in good faith and without delay, and that granting the orders would not prejudice the respondents.
7. The application is opposed through a replying affidavit sworn by Laban Kipchirchir Kirui on 5th June 2025. However, the deponent's capacity is not clearly stated. Nonetheless, he asserts that the proceedings in question are not against Resolution Insurance but against the applicant herself. Therefore, he argues, that the applicant has misapplied the provisions of section 432 (2) of the [Insolvency Act](#) which does not extend protection to third party proceedings against policy holders.
8. The deponent further contends that the applicant failed to demonstrate that the liquidation order issued against Resolution Insurance was extended. He refers to section 67C of the [Insurance Act](#), which provides for moratoriums on payment to policy holders and creditors, but clarifies that such moratoriums do not shield insured persons from liability to third parties. In his view, the applicant has not provided cogent proof that the moratorium applies to her, and therefore the proceedings herein could continue. He concludes that the application is intended to delay enforcement of a valid judgment and prays for its dismissal.
9. The Notice of Motion was canvassed by way of written submissions. However, as at the time of writing this ruling, the respondents had not filed its submissions. The applicant filed submissions dated 22nd August 2025. She submitted that section 432 (2) of the [Insolvency Act](#) protects insured persons and that allowing proceedings to continue against her without the participation or indemnity of her insurer, currently under statutory management would be prejudicial and contrary to the purpose of



the moratorium. She cited several authorities in support of her position and urged the court to grant the orders in the interest of justice.

10. I have considered the application, the affidavits on record, the annexure and the law. The applicant seeks to stay the present proceedings based on a moratorium issued in Nairobi HCCOMMIP No. E077 of 2023 on 21st December 2023. She relies on section 432(2) of the *Insolvency Act* which provides as follows:

“When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate.”

11. The orders issued and being referred to are as follows:

1. That the application is certified urgent.
2. That for reasons set out in the supporting affidavit the application is allowed as prayed.
3. That consequently, Longet Kiprono Terer is hereby appointed the interim Liquidator forthwith.”

12. The orders alone do not specify the nature of the application, the relief granted, or scope of the moratorium. Furthermore, the orders appear to be temporary in nature, and there is no evidence before this Court that they were extended or remain in force. It is also notable that the liquidation order was issued in 2023, yet the Applicant only brought this application in 2025. This delay raises questions about whether the Applicant has acted in good faith.

13. In my view section 432(2) of the *Insolvency Act* applies to proceedings directly against a company under liquidation. It does not automatically extend to third parties such as insured persons, unless expressly stated in the moratorium. The Applicant has not demonstrated that the moratorium issued in HCCOMMIP No. E077 of 2023 extended protection to her as a policyholder. Therefore, the reliance on section 432(2) is misplaced.

14. Taking into account the above, I find that the present Notice of Motion lacks merit. The Applicant has not established a legal basis for the stay of proceedings under the *Insolvency Act*, nor has she demonstrated that the moratorium applies to her personally. The application is therefore dismissed. Costs shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 30TH DAY OF SEPTEMBER, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant

