



**Maina v Resolution Insurance Company Limited (Civil Suit
E260 of 2022) [2025] KEMC 153 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEMC 153 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT E260 OF 2022
PA NDEGE, SPM
JULY 1, 2025**

BETWEEN

FREDRICK KAIRU MAINA PLAINTIFF

AND

RESOLUTION INSURANCE COMPANY LIMITED DEFENDANT

RULING

1. Vide a Notice of Preliminary objection dated 29.11.2024 the Defendant seeks the following orders: -
 - a. That pursuant to Section 432(2&3) of the *Insolvency Act* 2015, a Moratorium is placed over all legal proceedings against the Company and if any party wishes to continue or institute any legal proceedings against such a company under liquidation, they must obtain leave and/or approval of the Insolvency court.
 - b. That therefore in view of the above the hearing and determination of this matter should be stayed until the Plaintiff seeks leave of the court in High Court Commercial Insolvency Petition No. E077 of 2023 to continue with these proceedings against the defendant.
 - c. That this suit is incurably defective and ought to be stayed pending the outcome of the liquidator proceedings in E077 of 2023.
2. The matter came up in court for directions on the 11.02.2025 and the court directed that the Notice of Preliminary Objection be canvassed by way of written submissions. Pursuant to the directions, both parties herein filed their written submissions and arguments, citing impressive authorities.

Defendant's submissions

3. The defendant filed his submissions on 19.05.2025 wherein he raised one issue for determination which is whether the suit can proceed without leave of the Insolvency Court. Relying on the case of Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696, the defendant



submitted that the Preliminary Objection dated 29.11.2014 is raised on pure point of law on whether the Plaintiff suit can be sustained without seeking leave of the court after the appointment of Interim Liquidator.

4. Among other cases, the Defendant further relied on. is the case of Alex Ngugi Mwaura & Another V. Gikumba Investment Ltd & others (2021) eKLR where the Court allowed and upheld a similar Preliminary Objection on the ground of continuing and/bringing the suit without leave of the High Court. The Defendant further submitted that the suit by the Plaintiff violate Section 432 of the [Insolvency Act](#) 2015, and ought to be struck out with costs to the Defendant or in the alternative stayed pending the outcome of the liquidation proceedings.

Plaintiff submissions

5. In opposing the Preliminary Objection Dated 29th November, 2024, the Plaintiff file their submissions in Court on 28th May, 2025 upon which he submitted that his claim was for compensation for his motor vehicle registration number KCF 348A that was involved in a road traffic accident on or about the 15.08.2020 and that he is the Defendant's policy holder vide policy No. P0000-36419 and was entitled to compensation of Kshs. 800,000/= upon notifying the insurer. The Plaintiff further submitted that the Defendant had finalized its internal processing of the Plaintiff's claim and had therefore proceeded to put him on a legitimate expectation of payment.
6. The Plaintiff urges the court to find that the Preliminary Objection lacks merits and that it's an abuse of the Court process on the grounds that in the spirit of Section 20 of the [Evidence Act](#) and the Doctrine of Estoppel, the Defendant is bound by his legal duty as an insurer to honor a commitment to compensate a policy holder. Secondly, that the claim by the Plaintiff is, to an extent, a contractual obligations between him and the Defendant which should be honored.
7. In support of his submissions, the Plaintiff relied on the cases of Ester Akinyi Odidi & 2 Others v. Sagar Hardware Stores Ltd Kisumu HCCA No. 97 of 2005 and Mimi Bakeries (k) Ltd v. George Ondieki Nyamanga Kisii HCCA NO. 18 of 2013 and adopted the principle of estoppel espoused in the case of Kombe v. Kombe (1951) 2 KB 215.

Determination

8. Having considered the pleadings before Court and the submissions the issues for determination are;
 - a. Whether the preliminary objection is sustainable
 - b. Whether the suit can proceed without leave of the Insolvency Court.

Whether the preliminary objection is sustainable.

9. The Black's Law Dictionary a preliminary objection is defined as '...an objection that, if upheld, would render further proceedings before the tribunal unnecessary'. The above legal preposition has been made graphically clear in the now famous case of Mukisa Biscuits Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696, where Lord Charles Newbold P. held that a proper preliminary objection constitute a pure point of law. The Learned judge then held that: -

A Preliminary Objection is in the nature of what of what used to be a demurer, it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of preliminary



objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue.
The improper practice should stop.

10. Further the decision of Attorney General & another V Andrew Mwaura Githinji & another [2016] eKLR explicitly extrapolates in a more concise and surgical precision what is tantamount to the scope, nature and meaning of a preliminary objection inter alia: -
 - i. A Preliminary Objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
 - ii. A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is the exercise of judicial discretion; and
 - iii. The improper raise of points by way of preliminary objection does but unnecessary increase of costs and on occasion confuse issues in dispute.
11. It can therefore be deduced from the above that Preliminary Objection can only be raised purely on a point of law and not to question the truthfulness of a fact in a case because then it would be a breach of rules of procedure that guarantees the right to be heard and ought not to be entertained by courts of law.
12. To ascertain a point is pure law, the Supreme Court in Aviation and Allied Workers Union Kenya V Kenya Airways Ltd & 3 Others [2015] eKLR held that: ‘the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record’.
13. The Defendants raised the objection on the ground that pursuant to Section 432(2&3) of the *Insolvency Act* 2015, a Moratorium is in place over all legal proceedings against the company and if any party wishes to continue or institute any legal proceedings against such a company under liquidation, they must obtain leave and/or approval of the Insolvency court. I do agree that this is a point of law and does not require factual interrogation.

Whether the suit can proceed without leave of the Court.

14. In the instant case, the Defendant raised Preliminary Objection that the suit between him and the plaintiff be struck out for failure to seek leave of the Court to continue with this proceedings after the appointment of the interim Liquidator for Resolution Insurance Company.
15. The Plaintiff however submitted that the Preliminary Objection raised by the Defendant lacks merits on the grounds that the cause of action occurred before the alleged Moratorium was put in place, and secondly, that the claim is not for the establishment of liabilities by the third parties against the defendant, but that of a policy holder’s compensation.
16. The Defendant relied on Section 432(2) of the *Insolvency Act*. 2015 which states that: -

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.



17. On the other hand, the Plaintiff relied on the doctrine of estoppel elaborated by Denning LJ in *Kombe V Kombe* (1951) 2 KB 215 and as also provided for in Section 120 of the *Evidence Act* which states that: -

when any person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither that he nor his representative shall be allowed, in any suit or proceedings between himself and another person or his representative, to deny the truth of that thing

18. In *Hoggers Limited (In Administration) v John Lee Halamandres & 11 Others* [2021] eKLR, it was held that: -

Turning to the tenor and effect of the moratorium, the Court in *Cook v Mortgage Debentus Ltd* [2016] EWCA Civ 103 outline the purpose and effect of a moratorium under the *Insolvency Act* following the appointment of an administrator as follows;

In the case of liquidation and bankruptcy, the purpose of this provisions is essentially twofold. First, given that the property of the company or individual stands under the statute to be realized and distributed, subject to any existing interest, among the creditors on a pari passu basis, the moratorium prevents any creditor from obtaining priority and thereby undermining the pari passu basis of distribution. Secondly, given that both a liquidation and bankruptcy contain provision for the adjudication of claims by persons claiming to be creditors, the moratorium protect those procedures and prevents unnecessary and potentially expensive litigation.

19. Section 560 (1) (a) of the *Insolvency Act* 2015, states that while a company is under administration, a person may take steps to enforce a security over the company's property only with the consent of the administrator or with the approval of the Court. Additionally, Section 561(4)(f) provides that a person may begin or continue legal process (including legal proceedings, execution, distress and diligence) against the company or property of the company only with the approval of the Court.

20. In the matter of *Blue Shield Insurance Company Ltd (under Statutory Management)*, [2017] eKLR, Justice Odunga held that:

A Moratorium in my view is meant to protect the insurer against policy holders and creditors. It is not meant to protect policy holders and shield them from meeting their liabilities which they may be obligated to perform for third parties whether in contract, tort or under a statute...

21. In my view, the defendant is not seeking to default compensation as the insurer. It is seeking stay of proceedings during the pendency of the moratorium and thus the Plaintiff may seek leave of the Insolvency Court if he is to institute any proceedings against the Defendant.

22. Further, in *Midlant Energy Limited V George Muiruri T/A Leakeys Auctioneers & Others* [2019]eKLR, the court held that for the administrators to achieve their objective as contained in section 522 of the *Insolvency Act*, such a company must be insulated from aggressive creditors by way of moratorium from other legal processes.

23. In light of the foregoing, the purpose of a moratorium in legal proceedings is to allow the administrator some breathing space in order to carry out administration of the company in line with the objectives of the *Insolvency Act* 2015. In my view a party who wishes to institute any legal claim against a company under liquidation, must seek leave of the Court. Section 432(2) and 562(4)(f) is clear that a person may



continue any legal process against the company. Therefore, since the Plaintiff in the instant case is the policy holder he may continue a legal action against the Resolution Insurance Company Limited only with the approval or with the leave of Court.

Disposition

24. In light of my above findings, I do dispose of the preliminary objection herein as follows: -
- a. An order be and is hereby issued that the Preliminary Objection has merits and is allowed
 - b. A order be and is hereby issued that there be a stay of all preceding subsisting against Resolution Insurance Company (Under Statutory Management) in this suit during the currency of the moratorium unless leave of the Insolvency Court is sought
 - c. Costs to the defendant.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 01st DAY OF July,2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's counsel: Otokoma h/b Chetalam

Defendant's counsel: Ngetich

Plaintiff: n/a

