



**I & M Bank Limited v Mastermind Tobacco (K) Limited; Rao & Ponangipalli
(Administrator); Mdari (Creditor) (Insolvency Petition E076 of 2024)
[2025] KEHC 15058 (KLR) (Commercial and Tax) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15058 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E076 OF 2024**

AA VISRAM, J

OCTOBER 23, 2025

**IN THE MATTER OF MASTERMIND TOBACCO (K) LIMITED
AND
IN THE MATTER OF THE INSOLVENCY ACT(CHAPTER 53 OF THE LAWS OF KENYA)**

BETWEEN

I & M BANK LIMITED CREDITOR

AND

MASTERMIND TOBACCO (K) LIMITED DEBTOR

AND

**PONANGIPALLI VENKATA RAMANA RAO & SWAROOP RAO
PONANGIPALLI ADMINISTRATOR**

AND

JULIANA KATINI MDARI CREDITOR

RULING

Introduction & Background

1. By a Notice of Motion dated 8th April, 2024, and made inter alia under Section 1A,1B and 3A of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya), the Creditor is seeking to obtain the court's approval and/or the consent of the Debtor's Joint Administrators to proceed with pending legal



proceedings concerning her legal costs and that subsequently, she can initiate execution proceedings to recover the costs awarded to her in both the primary suit and appeal.

2. The Application is supported by the affidavit of the Creditor sworn on 8th April, 2024, and opposed by the Joint Administrators through the replying affidavit sworn on 10th April, 2025, by Swaroop Rao Ponangipalli. The Application has been canvassed by way of written submissions which are on record, and to which I shall make relevant references to.
3. The Creditor's case is that she is a former employee of the Debtor and that the Debtor filed a case in the subordinate court, being Nairobi CMCCC No. 1 of 2012 which was successful, but was overturned on appeal by the Employment and Labour Relations Court, with costs being awarded to her for both the suit and the appeal. The Creditor avers that she has been awarded costs of Kshs. 79,800.00/- for the suit and that for the appeal. She has computed a sum of Kshs. 216,145.00/- as per the Bill of Costs dated 14th November, 2023, that was due for ruling on 25th April, 2024. As such, the Creditor seeks to recover a total of Kshs. 295,945.00/- in legal costs and now seeks the court's approval and/or Joint Administrator's consent to do so.
4. In response, the Joint Administrators state that the Debtor was placed under administration on 14th December, 2023, and that a moratorium on all legal proceedings was issued and extended by the court at different times to last until 14th December, 2025, when the terms of the Joint Administrators ends. They depone that this moratorium legally prevents Creditors from starting or continuing legal proceedings against the Debtor without court approval; and that the primary goal of the administration, as per the *Insolvency Act*, is to achieve a better outcome for all the Debtor's Creditors as a whole, than would be achieved through immediate liquidation. Further, that allowing one Creditor to proceed with execution would violate the core principle of equality among unsecured Creditors because it would give that Creditor an unfair advantage and preference over other Creditors in the same class.
5. They averred that the Creditor's request is a "backdoor to overturning the moratorium" and an attempt to bypass the legal protection put in place to allow for an orderly administration process. The Joint Administrators submitted that the Creditor has not provided sufficient evidence to justify why she should be granted an exception to the moratorium that binds all other Creditors. They proposed that her claim be settled according to the legal order of priority as set out in the *Insolvency Act*, and that her claim, as an unsecured Creditor, will be addressed through the statutory process, rather than individual enforcement action. For these reasons, they urged the Court to dismiss the Application with costs.

Analysis and Determination

6. It is not in dispute that the Court has the discretionary power to approve legal proceedings to begin or continue against a company in administration under Section 560(1)(d) of the *Insolvency Act* as follows:
-

While a company is under administration - a person may begin or continue legal proceedings (including execution and distress) against the company or the company's property only with the consent of the administrator or with the approval of the Court. (Emphasis mine)

7. It is also common ground that there is presently moratorium on all civil proceedings in relation to the Company. For the same to be lifted so that proceedings, including execution, may continue, the court ought to consider the various factors set out in Section 560A of the *Insolvency Act*, which are as follows:-
560A. Considerations to take into account on applications for approval to lift moratorium



- (1) When considering whether to grant its approval under section 560, the court or the administrator may in particular take into consideration where appropriate—
 - (a) the statutory purpose of the administration;
 - (b) the impact of the approval on the applicant particularly whether the applicant is likely to suffer significant loss;
 - (c) the legitimate interests of the applicant and the legitimate interest of the Creditors of the company, giving the right of priority to the proprietary interest of the applicant;
 - (d) whether the value of the secured Creditor's claim exceeds the value of the encumbered asset;
 - (e) whether the secured Creditor is not receiving protection for the diminution in the value of the encumbered asset;
 - (f) whether the provision of protection may be feasible or overly burdensome to the estate;
 - (g) whether the encumbered asset is not needed for the reorganization or sale of the company as a going concern;
 - (h) whether relief is required to protect or preserve the value of assets such as perishable goods; or
 - (i) whether in reorganisation, a plan is not approved within six months.
- (2) An approval granted under subsection (1) shall be for a period of not more than twenty-eight days. (Emphasis mine)

8. Having considered the above factors, and based on the facts set out in the Creditor's Application, I find that there is nothing unique or urgent about her claim that ought to take priority over the proper administration of the company and settlement of similar claims of Creditors in her class.
9. Maintaining the moratorium is in the best interest of all Creditors. It will offer the company the best chance for rescue and return to a position as a going concern. This is the most equitable and fair treatment for all Creditors. Granting the orders sought by the Applicant would give this particular Creditor a significant advantage over the others. She would be the only Creditor entitled to execute and potentially recover her debt while other unsecured Creditors are held at bay by the moratorium. I find that no compelling reasons have been advanced to justify the position proposed.
10. This Court has on previous occasion stated that the extension of the moratorium is intended to allow the Administrators a real opportunity to achieve their statutory mandate. Allowing one Creditor to pierce the moratorium immediately after extension, would render the Court's previous order ineffective.
11. I say so, bearing in mind that that the objectives of administration as set out under Section 522 of the Insolvency Act include:-
 - (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 realise the property of the company in order to make a distribution to one or more secured or preferential Creditors.
12. In order to achieve the objectives of administration, it is essential that the Administrators maintain adequate cash flow and have access to the company’s assets to support a potential rescue or an orderly sale, as circumstances may require. Allowing piecemeal execution, even for the relatively small sum of Kshs. 295,945/-, risks opening the floodgates to numerous similar claims. Collectively, these could severely undermine and potentially cripple the administration process. More fundamentally, as I have already found, the Creditor has not demonstrated any justification for elevating her unsecured claim above the structured statutory framework for submission, verification, and payment of Creditor claims in the order of priority prescribed under Section 474 of the [Insolvency Act](#).

Conclusion and Disposition

13. For the reasons set out above, I find no merit in the Application. The Applicant is, however, at liberty to lodge her claim with the Joint Administrators for consideration alongside the other Creditor claims in accordance with the [Insolvency Act](#).
14. Accordingly, the Notice of Motion dated 8th April, 2024, is dismissed with costs to the Administrators.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 23RD DAY OF OCTOBER, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

Court Assistant: Lispa

.....for Debtor

.....for Creditor

