



**Midland Hauliers Limited (Under Administration) v Rao (Administrator of Midland Hauliers Limited) & another (Insolvency Petition E012 of 2019) [2025] KEHC 15662 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15662 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY PETITION E012 OF 2019**

**JWW MONG'ARE, J**

**OCTOBER 30, 2025**

**IN THE MATTER OF MIDLAND HAULIERS LIMITED (UNDER ADMINISTRATION)  
AND  
IN THE MATTER OF THE INSOLVENCY ACT(CHAPTER 49 OF THE LAWS OF KENYA)**

**BETWEEN**

**MIDLAND HAULIERS LIMITED (UNDER ADMINISTRATION) PETITIONER**

**AND**

**PONANGIPALLI VENKATA RAMANA RAO (ADMINISTRATOR OF  
MIDLAND HAULIERS LIMITED) ..... 1<sup>ST</sup> RESPONDENT**

**PRIME BANK LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By way of a Notice of Motion dated 21<sup>st</sup> July 2021, the Petitioner seeks the leave of the Court to amend its initial petition as shown in a draft annexed to the application and have the amended Petition considered as officially filed and served. The application is supported by the affidavit of the Petitioner's director, Jayesh P. Kotecha, sworn on 21<sup>st</sup> July 2021 and opposed by the Respondents through the affidavits of Alka Shahi, the Assistant General Manager in the Credit Department of the 2<sup>nd</sup> Respondent, sworn on 10<sup>th</sup> December 2021 and 8<sup>th</sup> March 2024. The parties have also supplemented their positions by filing written submissions which I have considered and I will be making relevant references to the same in my analysis and determination below.



2. I am in agreement with the Petitioner’s submission that the Civil Procedure Rules grants the Court discretionary power to allow amendment of pleadings as follows under Order 8 Rule 3(2) and (5) and Rule 5:

Amendment of pleading with leave [Order 8, rule 3]

- (2) Where an application to the Court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the Court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.

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- (5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.

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5. General power to amend [Order 8, rule 5]

- (1) For the purpose of determining the real question in controversy between the parties, or correcting any defect or error in any proceedings, the Court may either on its own motion or on the application of any party order any document to be amended in such manner as it directs and, on such terms, as to costs or otherwise as are just.”

3. The Court of Appeal, in *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] KECA 345 (KLR) held as follows in respect of amendment of pleadings:

The law on amendment of pleading in terms of section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from Bullen and Leake & Jacob’s *Precedents of Pleading - 12th Edition*, in the case of *Joseph Ochieng & 2 others vs. First National Bank of Chicago*, Civil Appeal No. 149 of 1991 as follows: -

“The ratio that emerges out of what was quoted from the said book is that powers of the Court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the Court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the Plaintiff will not be allowed to reframe his case



or his claim if by an amendment of the plaint the Defendant would be deprived of his right to rely on Limitation Acts.”

4. The Petitioner states and submits that the reason for the amendment is to include a newly obtained independent forensic audit report, to rectify a previous mistake regarding the Company's account status with the Bank, which the Petitioner claims it could not ascertain earlier because the bank refused to provide a proper statement and that the Petitioner contends that the Bank will not be unfairly disadvantaged by the amendment, as it will have the right to reply. That allowing the amendment is in the interest of justice.
5. In response, the Respondents stated that the Petitioner lacks the legal standing to make claims while under administration and that such claims can only be made after the administration process concludes. They state that the application to amend the petition to include claims for damages and accounts is inappropriate as these should be pursued in a separate civil suit, not in insolvency proceedings. Further, that the petition and the 1<sup>st</sup> Respondent's (Administrator's) application are already scheduled for hearing and it is too late to convert the matter into a full trial.
6. The Respondents accuse the Petitioner's directors of refusing to surrender Company assets, failing to provide a Statement of Affairs, withdrawing Company funds without consent and selling/disposing of assets under administration and that one director has been criminally charged for fraudulent disposal of assets. The Respondents contend that the Petitioner's director previously admitted indebtedness to the Bank though he disputed the amount in debt and that the Bank is owed over USD 6.6 million and Kshs 6.8 million as of September 2021. They depone that the Petitioner's auditor's report claims the Bank owes the Company money, which contradicts the director's sworn affidavit admitting indebtedness to the Bank.
7. The Respondents see the amendment as a tactic to delay and obstruct the administration process, which has already been pending for over two years and that a related civil suit, HCCC No. E399 of 2020 has already addressed many of the issues the Petitioner now seeks to introduce via amendment. The Court (the late Majanja J.) in that case ruled that the Bank did disburse funds and that the indebtedness exists. As such, the Respondents urge the Court to dismiss the Petitioner's application.
8. I have gone through the application, the Respondents' responses and the submissions and I decline the prayer for the amendment for a number of reasons. First, going through the annexed the draft petition, I am inclined to agree with the Respondents that the proposed amendments seek to fundamentally alter the character of the insolvency Petition by introducing substantive claims for damages, declaratory reliefs, allegations of unlawful conduct, tort, and commercial disputes. These new claims, fall outside the scope of insolvency proceedings and properly belong in a separate civil suit, as they involve contested facts, fraud, and commercial loss, which require viva voce evidence and cross-examination. Indeed, allowing the amendment would convert the administration process into a civil suit, contradicting the objectives of administration set out in section 522 of the *Insolvency Act*, which focuses on managing the Company for the creditors' benefit and protecting it from harassment or uncoordinated disposal of assets.
9. It should not be lost that an administration petition under the *Insolvency Act* is, by its nature, a proceeding initiated by or against a Company that is, or is likely to become, unable to pay its debts. It is a collective proceeding for the rescue of the Company or the orderly distribution of its assets among creditors. The original Petition was founded on a debtor-creditor relationship where the Petitioner was presumed to be the debtor. The proposed amendments, however, seek to turn this premise on its head. By asserting that the Bank is, in fact, the debtor, the Petitioner is no longer seeking the reliefs contemplated by the *Insolvency Act*. Instead, it is attempting to convert an insolvency petition into a



declaratory suit for a liquidated sum, a cause of action completely foreign to the statutory framework of insolvency. The *Insolvency Act* provides a specific and self-contained regime. It is not a substitute for a general civil suit for the recovery of a debt. Allowing such a radical transformation of the petition would be an abuse of the Court's insolvency process and would be contrary to the specific objectives and procedures laid down in the Act.

10. Second, I agree with the Respondents and I take judicial notice that the issues in the amendments sought to be introduced by the Petitioner including its indebtedness to the Bank are the subject of determination in *Midland Investments (KSM) Limited v Prime Bank Limited & 2 others* [2021] KEHC 12763 (KLR). The late Justice Majanja, in a ruling dated 26<sup>th</sup> March 2021 found on a prima facie basis that that the Bank disbursed funds to the Petitioner and that there was an express admission in this suit in the deposition by JAYESH KOTECHA, sworn on 2<sup>nd</sup> May 2019, that the Petitioner is indebted to an amount of Kshs.610,835,497.29/= to various creditors and that, "it is also indebted to Prime Bank Limited (Secured Creditor) for a DISPUTED outstanding Loan of Kshs. 522,236,743.00/= anchored upon various Charge Instruments and registered in favour of the Secured Creditor." On the production of accounts, the Court also found that the Bank had detailed and annexed to its deposition statements of account, furnished an account of all securities and fixed deposit receipts in respect of all the advances and that whether the statements of account are correct was a matter for discovery and trial in due course.
11. It therefore follows that the issues of the Petitioner's level of indebtedness and the correctness and/or production of the statements is sub judice *Midland Investments (KSM) Limited v Prime Bank Limited & 2 others*(supra). The Petitioner cannot be permitted to use an amendment to an insolvency petition as a backdoor to litigate matters that are directly and substantially in issue in a separately filed and pending suit. To allow the amendment would be to encourage multiplicity of suits and conflict of findings, which is precisely what the sub judice rule seeks to prevent. The proper forum for ventilating the claims of fraud and erroneous accounting is the already instituted suit, *Midland Investments (KSM) Limited v Prime Bank Limited & 2 others*(supra).
12. I think I have now said enough to dismiss the Petitioner's application dated 21<sup>st</sup> July 2021. On costs, I direct that each party bear its own costs as this is matter that is between a company and its directors and or managers.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF OCTOBER 2025**

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**J.W.W. MONGARE**

**JUDGE**

In the Presence of

1. Ms. Gitonga holding brief for Mr. Kelvin Mogeni for the Petitioner/ Applicant.
2. Mr. Mwangi and Mr. Wanyoike for the Respondents- Administrator and the Bank.
3. Amos - Court Assistant

