



**Rao v Athi River Steel Limited; Paul Mwangi & Co Advocates
(Creditor) (Miscellaneous Application E550 of 2021)
[2025] KEHC 15645 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15645 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E550 OF 2021**

F GIKONYO, J

OCTOBER 30, 2025

IN THE MATTER OF ATHI RIVER STEEL PLANT LIMITED (IN RECEIVERSHIP)

AND

IN THE MATTER OF THE INSOLVENCY ACT, 2015

AND

IN THE MATTER OF THE INSOLVENCY REGULATIONS, 2016

BETWEEN

PONANGIPALI VENKATA RAMANA RAO APPOINTED RECEIVER

AND

ATHI RIVER STEEL LIMITED AFFECTED COMPANY

AND

PAUL MWANGI & CO ADVOCATES CREDITOR

RULING

1. There are two applications before the court.
2. The application dated 20.11.2024 by the receiver manager seeking, inter alia, that: -
 4. During the period of Receivership under the Receiver Manager, an order be issued that no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of



the Receiver Manager or the leave of the court and subject to such terms as the Court may imposed.

5. That all the Claims of Creditors be ranked accordingly, with the Secured Creditors/Debenture holders ranking first.
3. And, the application dated 28.11.2024, by the creditor, seeking that the temporary stay of execution given on 26.11.2024 be set aside vacated and/or discharged.

Application dated 20.11.2024

4. The application is supported by the affidavit sworn by the receiver manager, Ponangipalli Venkata Ramana Rao on 20.11.2024. It is made under Sections 22,23,430,459,525,560,561,649,690,734 of the *Insolvency Act*, 2015.
5. The grounds are: -
 1. The receiver/ manager was first appointed on 18.5.2018 by Bank of Africa Kenya Limited, NCBA Bank Kenya PLC (formerly Commercial Bank of Africa) and I & M Bank Limited.
 2. The applicant's term as receiver was extended by the court on 24.11.2022.
 3. The applicant has been served with warrants of attachment of movable property in execution of decree of money.
 4. The said warrants do not distinguish between the receiver's personal property and that of the subject company and it amounts to punishing him, acting in his professional capacity and performing his statutory roles under the supervision of this court.
 5. The receiver/ manager did not instruct the creditor. The creditor was instructed by the company before it was placed under receivership.
 6. The banks /debenture holders created a floating charge over the assets of the company and they are secured creditors who rank first.
 7. No approval of this court has been sought before execution.
 8. The intended execution has the effect of defeating the rights of the secured creditors and/or debenture holders without the leave of the court.
 9. The creditor has also issued proclamation against the assets of the receiver personally, situate at Tact Consulting LLP, Westlands which is prima facie illegal.
 10. The intended execution is against the *Insolvency Act*, rights of secured creditors and/or debenture holders.
 11. The creditor's /interested party's claim is a claim against the subject company for legal services rendered against the company before it was placed under receivership as per the certificates of taxation. The claim ought to be processed in due course and this court will classify its rank after the claim of secured creditors/debenture holders are satisfied. The creditor /interested party will have an opportunity during the creditors' meeting to present its claim.
 12. The effect of warrants of execution issued is to steal the match from other creditors, making the decree holder's claim first in rank without regard to the due process.



6. In opposition to the application, the creditor filed the grounds of objection dated 13.12.2024, in the following terms: -
 1. the application is incompetent, untenable and an abuse of the court process.
 2. the application is res- judicata.
 3. issues raised are sub-judice.
 4. the application is fatally defective for breach of the mandatory provision of the Section 34 Civil Procedure Act.
 5. the purported interested party is not a party to these proceedings and as such no order can be issued against them.
 6. the order sought in the said application cannot be issued in the matter which is already spent.
 7. the interested party has not been properly joined in the proceedings.
 8. the applicant has not approached the court with clean hand and has failed to disclose the existence of 2 previous applications seeking the same relief.

Application dated 28.11.2024

7. The application is supported by the affidavits sworn by Wangui Njoroge on 28.11.2024 and 12.03.2025.
8. The grounds are similar to the grounds of objection above.
9. The application is opposed by the receiver manager through the grounds of opposition dated 17.12.2024, in the following terms: -
 1. The Insolvency Act empowers this Court to determine all issues relating to Insolvent Companies.
 2. This court has jurisdiction to determine whether execution against a company in liquidation/ under receivership is valid or void.
 3. This court has jurisdiction to determine the ranking of claims including that of the creditor.
 4. The claim of the creditor is not disputed but its ranking is disputed.
 5. The applicant has made out a case deserving grant of stay of execution.

Analysis and Determination

10. The creditor argued that the application dated 20.11.2024 is res judicata, sub judice and offends section 34 of the Civil Procedure Act. The creditor also challenged the inclusion of the interested party or company in the proceedings. These form the preliminary issues for determination.
11. The main issue before the court is whether during the period of receivership under the receiver/ manager, an order be issued that no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the receiver/ manager or the leave of the court and subject to such terms as the court may impose.



12. I have read the pleadings, evidence and ruling in Employment and Labour Court in E & L Misc Cause E218 of 2023.
13. I form the view that, the order sought through the application under consideration is forward-looking. Therefore, the pleas of res judicata and sub judice are not applicable.
14. The insolvency court is defined under section 2 of the *Insolvency Act* as the High Court, and if there is an insolvency division of that Court, means that division.
15. The insolvency court has the power to hear applications in relation to receivership. Therefore, I do not think that the application is offensive to section 34 of the *Civil Procedure Act* as the subject company was placed under receivership.
16. The interested party is the subject company and therefore, I do not find merit in the contention that it has not been properly joined.

Receivership of the Company

17. The receiver/ manager was first appointed on 18.5.2018 by Bank of Africa Kenya Limited, NCBA Bank Kenya PLC and I & M Bank Limited. The applicant's term as receiver was extended by the court on 24.11.2022.
18. The banks had advanced various banking facilities to the company between 2010 and 2014 and the facilities had been secured by fixed and floating debentures over parcels of land owned by the company.
19. In 2015 and 2016, the company defaulted in repayment obligations. The parties entered into an agreement for partial payment of the amounts owing. The company did not effect payment within the agreed timelines. This led the banks to appoint the receiver/ manager through a Deed of Appointment of 18.5.2018. Subsequently, a notice of appointment of receiver/ manager dated 28.5.2018 was issued and published in the Daily Nation on 29.5.2018.
20. The company challenged the appointment of the receiver/ manager in Machakos HC Insolvency Case No.16 Of 2018). However, the court found that the appointment of the 1st respondent in the manner done was within the terms of the contract and also to a large extent in compliance with the *Insolvency Act*. Since the debenture was duly registered, the court found that the documents on which the right to appoint a receiver/ manager of the company was founded were valid.
21. The court's finding was upheld by the Court of Appeal in Athi River Steel Plant Ltd v Rao & 4 others (Civil Appeal 592 of 2019) [2024] KECA 585 (KLR) (24 May 2024) (Judgment), reasoning that: -

“The appointment of Receiver and Manager or Administrator was an integral part of the contractual enforcement mechanism included, the appointment of a Receiver/Manager over the assets, properties and business of the appellants. That was an integral contractual agreement between the parties hence parties are bound by their decisions. Section 690(4) of the *Insolvency Act*, 2015 expressly allow the holders of a floating charge, which pre-dates the coming into force of the *Insolvency Act*, January 18, 2016. The said Section preserved the rights of debenture holders and charges to appoint a Receiver/Manager, provided the debenture or charge was created before September 5, 2003. Clearly, the Receiver/Manager/ Administrator was appointed on May 24, 2018 making it within the purview and powers of section 690(4) of 2015.”



Moratorium on Legal Processes

22. In essence, the receiver/ manager seeks a moratorium on the commencement or continuation of legal process against the company during the period of receivership. There are two schools of thought on whether there ought to be a moratorium on legal process during receivership of a company.
23. Some courts have held that there is no need for leave to be sought before instituting a claim against a company under receivership because the company in receivership still has its corporate status intact. *Kienzeko Limited v Kenatco Taxis Limited (In receivership)* 2005 KEHC 614 (KLR), *Republic v Kenya Revenue Authority Ex-parte KSC International Limited (In Receivership)* [2016] eKLR
24. In support of this viewpoint, it has also been opined that receivership and liquidation are two distinct legal processes used when a company is in financial distress. Receivership occurs when a secured creditor, such as a bank, appoints a receiver to take control of specific assets or the company's operations in order to recover outstanding debts. In this case, the company remains a legal entity and may continue operating, with the primary goal being debt recovery or business stabilization. The company under receivership remains a legal entity, capable of suing and being sued in its own name. *Kenya Engineering Workers Union (In Receivership) & 173 others v Athi River Steel Plant (In Receivership) & another (Cause 661 of 2019)* [2025] KEELRC 2162 (KLR) (18 July 2025) (Ruling)
25. Other courts have held that for a company under receivership under the *Kenya Deposit Insurance Act*, a party suing it must seek the court's leave before commencing a suit against it.
26. This is because receivership is a preservation process put in place to protect the assets, liabilities and business affairs of a bank with the aim of protecting the interests of its depositors, creditors and members of the public. *Andrew G. Muchai v Chase Bank Ltd* [2016] eKLR
27. A profound judicial practice and interpretational hint. In *Kimeto & Associates Advocates v KCB Bank Kenya Limited & 2 others* [2021] KEHC 242 (KLR), the court observed that: -
 - “ 88. In answering the two issues the Court has to consider the current legal framework vis a vis the circumstances the Company and all the actors find themselves in. Previously, the appointment of a receiver manager over a Company was but a kiss of death to the concerned Company. Never in the history of receivership in this Country was any Company in distress was ever turned around. Receivership was a selfish, and destructive affair that was only self-centred concerned with the heavy remuneration of the concerned receiver and the appointing authority.
 89. Receivership was not constrained by any duty to consider the interests of the debtor or its creditor (see *China & South Sea Bank Ltd vs Tan Soon Gin (Alias George Tan)* (1990) IAC 536). It was a remedy designed to protect the interests of the security holder; preservation of the business was not its primary concern. Once appointed, there was no obligation for the receiver and manager to continue to trade (*Medforth v Blake* (2000) Ch 86).
28. In the above case, the court also recognized that the position is now changing with courts now appreciating the need to consider the public interest and balancing the interests of all stakeholders of companies that are under insolvency.



29. This is reflected in the objective of the *Insolvency Act* to provide as an alternative to liquidation procedures that will enable the affairs of such of those bodies as become insolvent to be administered for the benefit of their creditors.
30. In re Arvind Engineering Limited [2019] KEHC 12266 (KLR), the court appreciated that: -
- “There lies some commonality between the past concept of Receiver-manager and the contemporary concept of Administration.”
31. In that mixed jurisprudential context, appointment of ‘administrative receiver’ under section 690 of the *Insolvency Act* ushers in new thinking especially on the status, obligations, legal tools or protections and relationship between receiver or manager under a floating charge and the operational modus under the insolvency law.
32. Of greatest value to this discourse is that, the receiver/manager was appointed under section 690 of the *Insolvency Act*.
33. Section 690 (1) of the *Insolvency Act* provides that: -
- “ 690.
- (1) In this section, "administrative receiver", in relation to a company, means—
- a. a receiver or manager of the whole (or substantially the whole) of the company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities;”
34. The appointment was pursuant to a floating charge created before the commencement of the *Insolvency Act*.
35. Thus, he is an administrative receiver properly appointed under section 690 of the *Insolvency Act*.
36. In my understanding, the only difference between an administrator and an administrative receiver is that the latter is appointed by a holder of a debenture that was created before the *Insolvency Act* came into force but creating the link to and observance of the objectives of insolvency by the administrative receiver. See also the requirements and qualifications of the administrative receiver. Nothing shows that the role and obligations of an administrator and administrative receiver under the *Insolvency Act* are any different.
37. Effective and productive reframing of the obligations of the administrative receiver, and providing appropriate legal as well as operational tools (including protections) thereto, is nigh. The administrative receiver is obligated to administer the assets of the company taking into account the interests of the creditors as a whole. It would be retrogressive to suggest an administrative receiver should act obliviously of the interest of the creditors of the company lest we should revert to the infamous ‘Kiss of Death’ situation.
38. Once an administrator is appointed, a moratorium comes into play. During the existence of the moratorium, proceedings and execution against the company are stopped and creditors may only exercise their rights against the company with the consent of the Court or administrator.



39. In my considered view, once the appointment of administrative receiver is made under section 690 of the *Insolvency Act*, the protection under section 560 of the *Insolvency Act* kicks in.
40. Section 560 of the *Insolvency Act* provides that: -
- “ 560. Moratorium on other legal process while administration order has effect
- (1) 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.”
41. This is meant to protect the collective interests of the creditors and to ensure orderly and equitable administration of company assets.
42. Thus, as the administrative receiver bears and discharges the obligations under the *Insolvency Act*, so also should avail himself of such legal and operational protections as are provided in the law. Flowing from the above, the court finds that there is a need for consent of the administrative receiver or approval of the court before the commencement or continuation of legal proceedings (including execution and distress) against the subject company.

Priority ranking of creditors

43. The administrator receiver confirmed that creditor was instructed by the company before it was placed under receivership. He also confirmed that the creditor's claim is not disputed but its ranking is. He expressed concern about the rights of the secured creditors since the creditor had served him with warrants of attachment of movable property in execution of decree of money.
44. The receiver prayed that all the claims of creditors be ranked accordingly, with the secured creditors/ debenture holders ranking first.
45. The court gives deference to the rights of the secured creditors/ debenture holders.
46. However, it bears repeating that administrative receiver's mandate extends to ensuring the protection of the creditors' collective interests. Therefore, the claims of creditors shall be ranked in accordance with the Second Schedule of the *Insolvency Act*.

Setting aside of stay orders

47. The application dated 28.11.2025 sought order for temporary stay of execution given on 26.11.2024 be set aside vacated and/or discharged.
48. The interim orders were only intended to subsist pending the hearing and determination of the application. The prayer is now spent as the application is for dismissal.

Conclusion

49. In conclusion, the administrative receiver cannot seek to avail himself of the protections of the law under section 560 of the *Insolvency Act* and refuse to take the obligations placed under the same law upon such administrative receiver. He assumes responsibilities and obligations towards the objectives of the insolvency law as he also seeks protections under the same law. Accordingly, the application dated 20.11.2024 is merited. It is allowed in the following terms: -



1. During the period of Receivership under the administrative Receiver, no proceedings and no execution or other legal process may be commenced or continued with, and no distress may be levied, against the company or its property except with the consent of the Administrative Receiver or the approval of the court and subject to such terms as the Court may impose.
 2. Claims of Creditors be ranked in accordance with the Second Schedule of the *Insolvency Act*. And, within that framing, the administrative receiver to accordingly act in accordance with the objectives of the *Insolvency Act* towards the company and all its creditors.
50. The application dated 28.11.2024 is dismissed for want of merit with no costs.
51. For the avoidance of doubt, following the finding that the application dated 20.11.2024 is merited, execution of the warrants of attachment and sale is stayed unless the creditor obtains the consent of the receiver or approval of the court.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE
APPLICATION THIS 30TH DAY OF OCTOBER, 2025.**

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F. GIKONYO M

JUDGE

In the presence of:

Ms. Wangui for Creditor

Keaton for Applicant/Receiver

CA Kinyua

