



REPUBLIC OF KENYA



Wainaina & another v Midlands Limited & 4 others (Commercial Case 13 of 2018 & 93 of 2016 (Consolidated)) [2025] KEHC 15663 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15663 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 13 OF 2018 & 93 OF 2016 (CONSOLIDATED)**

JWW MONG'ARE, J

OCTOBER 30, 2025

BETWEEN

JUNGHAE WAINAINA 1ST PLAINTIFF

JUANCO GROUP LIMITED 2ND PLAINTIFF

AND

MIDLANDS LIMITED 1ST DEFENDANT

AFRICAN AGRICULTURAL CAPITAL FUND LLC 2ND DEFENDANT

GITHIMA LIMITED 3RD DEFENDANT

PRIMESTART HOLDING LIMITED 4TH DEFENDANT

EQUITY BANK (K) LIMITED 5TH DEFENDANT

RULING

1. By an application dated 25th November 2024, the 1st Defendant (“Midlands”) seeks to commit the 5th Defendant’s (“the Bank”) Managing Director/CEO to civil jail for 6 months for contempt of the Court’s orders issued on 29th January 2018 and 30th November 2023. It further seeks to restrain the Bank from proceeding with any receivership pending the hearing of the main suit. The application is supported by the grounds on its face and the affidavits of SAMUEL MATHERI HUNGU, a director of Midlands, sworn on 25th November 2024 and 28th April 2025 and; the supporting affidavit of JOHN MBURU, the 2nd Plaintiff’s Finance Manager, sworn on 25th April 2025.
2. The Bank opposes the application through the replying affidavit of its Manager, Legal Services, KARIUKI KING’ORI sworn on 13th March 2025 whereas the Bank’s Receiver opposes the same through the Grounds of Opposition dated 24th March 2025. The application was canvassed by way of



written submissions which are on record and I will be making relevant references to the same in my analysis and determination below.

Analysis And Determination

3. From the parties' submissions, the main issues for the Court's determination are whether the Bank is in contempt of the Court's orders and whether the appointment of the Receiver by the Bank should be set aside. Midlands contends that on 6th November 2024, one Peter Kahi, accompanied by police and security personnel, arrived at Midlands' premises in Njabini claiming to be the appointed Receiver by the Bank but that no prior notice of the receivership was given to Midlands. It avers that the Bank's actions allegedly breach two Court orders: That of 29th January 2018 by Ngetich J., preserving the status quo of Midlands' assets and that of 30th November 2023 by this Court restraining the bank from selling or interfering with Midlands' assets. Midlands states that its advocates demanded that the Bank withdraw the receivership and apologize via a public advertisement but the Bank did not respond. Midlands claims the Bank is refusing to provide a loan statement despite repeated requests, suggesting the receivership is a pretext to seize assets rather than recover a legitimate debt.
4. Midlands submits that upon being formally joined to the suit on 30th November 2024 the Bank became bound by all existing and applicable Court orders, including the one preserving the status quo. That the Bank even admits awareness of the orders in its deposition making its subsequent denial of knowledge of the same as approbating and reprobating. Further, that despite the order, the Bank appointed Mr. KAHU as a receiver and manager on or about 6th November 2024, which was formalized and publicized via Form 233 in the Daily Nation on 7th November 2024. It submits that this drastic step of dispossession was diametrically opposed to the spirit and letter of the status quo order and the doctrine of lis pendens. Midlands emphasize that Court orders are binding directives that must be obeyed, and actual service is not a prerequisite for contempt if the party had actual knowledge.
5. In response, the Bank depones that it was not a party to the proceedings when the initial status quo order was issued on 29th January 2018 and that a party cannot be held in contempt of a Court order it was not aware of and to which it was not subject at the time. The Bank cites Order 40 Rule 6 of the Civil Procedure Rules, which states that an interlocutory injunction lapses after 12 months unless extended by the Court and it contends that Midlands has provided no evidence that the 2018 order was ever extended, implying it was no longer in force. Regarding the 30th November 2023 order from the Court, the Bank avers that it only restrains the sale of specific and listed properties and the disposal of Midlands' assets and shares. The Bank asserts that it has not sold or disposed of any of these properties, despite the debt being acknowledged as owed. It thus maintains that it is not in contempt of any of the Court's orders.
6. It is trite that once a Court issues an order, it binds all and sundry, the mighty and the lowly equally without exception. It is meant to be obeyed and not otherwise and that the ingredients required to be proved for a successful contempt prosecution were set out by the Court of Appeal in *Ochino & another v Okombo & 4 others* [1989] KECA 65 (KLR) where it cited its own decision in *Mwangi Mangondu v Nairobi City Council* (Civil Appeal No. 95 of 1988) where it held that, "[T]he Court will only punish as a contempt breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt." The position on the applicable standard of proof has



been affirmed by the Supreme Court which held as follows in *Githiga & 5 others v Kiru Tea Factory Company Ltd* [2023] KESC 41 (KLR):

In enforcing compliance with lawful Court orders, the procedures adopted by the Court must be fair and reasonable in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor's culpability.

7. Going through the parties' rival arguments, I find that the Bank was not in contempt of the two Court orders for a number of reasons. First, it is an uncontroverted fact that the Bank was not a party to these proceedings in January 2018 and that the orders issued at the time were directed at the 1st, 2nd, and 3rd Defendants. Consequently, the Bank could not have been served with or been bound by this order in 2018. Second, as this Court in *Mumo v HFC Limited & another* [2024] KEHC 11855 (KLR) held, status quo orders though not injunctive, are indeed interlocutory orders. They are intended to preserve the existing state of affairs pending the hearing and determination of a case. Since they are temporary measures rather than final resolutions of the underlying dispute, they fall within the category of interlocutory orders. As such, they are subject to Order 40 Rule 6 of the Rules which provides that "Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant the injunction shall lapse unless for any sufficient reason the Court orders otherwise"
8. I am therefore in agreement with the Bank's submission that the said status quo orders of January 2018 could not subsist indefinitely and that as per Order 40 Rule 6 above, they lapsed by operation of law after 12 months in January 2019. Thus, the Bank cannot be held in contempt of an order that did not bind it and which had lapsed due to the effluxion of time.
9. Third, in respect of the orders of November, 2023, considering that contempt proceedings are quasi-criminal in nature, the terms of the said order must be interpreted strictly and literally. The said order restrained the Bank from selling by public auction or private treaty six specified parcels of land being L.R. No. Nyandarua/Njabini 6092, 6091, 6090, 6089, 6088, and 6087. The act complained of by Midlands is the appointment of a Receiver, Mr. Peter Kahi. There is a clear legal and factual distinction between appointing a receiver and selling or disposing of assets. The role of a receiver is to take control and manage assets, often as a step prior to a potential sale, but it is not, in itself, a sale or disposal. The Bank has categorically stated, without contradiction from Midlands that it has not sold any of the aforementioned properties listed in the 2023 order. This order is silent on the appointment of a receiver and does not expressly prohibit such an appointment.
10. Whereas I can find that the actions of the Bank in appointing a receiver is potentially aggressive or commercially contentious, this does not fall within the specific prohibitions set out in the order of 30th November 2023. There is therefore no clear breach by the Bank in respect of this order. In summary, the Court finds that Midlands has not made out a prima facie or conclusive case for contempt of Court against the Bank.
11. Turning to the appointment of the Receiver by the Bank, Midlands submits that his appointment was illegal because it was procedurally flawed and reflected bad faith on the part of the Bank as it failed to serve any prior statutory notice on Midlands before appointing him, a requirement under section 534(1) of the *Insolvency Act* (Chapter 49 of the Laws of Kenya). It submits that the absence of this notice strips the appointment of legality and renders it void ab initio and violates the right to be heard and the constitutional guarantee of a fair administrative action. It presents that the appointment was



- “stealthy”, despite Midlands’ new board having made good-faith overtures in August and September 2024 to engage the Bank and regularize the loan account. Midlands submits that the Bank met these efforts with “inertia” and later emerged with this appointment suggesting an ulterior motive and abuse of process.
12. In response, the Bank submits that the Bank had a contractual or statutory right to appoint a receiver under the charge instrument and section 90(3) of the Land Act grant the bank independent rights to appoint a receiver upon default. The said section 534(1) of the Insolvency Act provides that “The holder of a qualifying floating charge in respect of a Company’s property may appoint an administrator of the Company.” Section 90(3) of the Land Act on the other hand provides that “If the chargor does not comply within ninety days after the date of service of the notice under, subsection (1), the chargee may —……;(b) appoint a receiver of the income of the charged land;”
 13. From the aforementioned two provisions, it follows that the requirement for a formal, prior statutory notice before appointing a receiver is primarily governed by the Land Act and the terms of the charge instrument. It is clear that the Insolvency Act, more section 534(1), does not impose an independent statutory obligation on the Bank as a chargee, to issue a formal, prior statutory notice to Midlands before appointing a receiver under the powers conferred by the security instrument. Once notice is served as per section 90(1) of the Land Act then a receiver may be appointed under the debenture. Therefore, the argument that the appointment of the receiver is void ab initio purely for lack of a specific prior statutory notice under the Insolvency Act lacks legal foundation. The legality of the appointment must be determined by the terms of the security instrument, in this case, the debenture and whether the grounds for default were met. As Midlands has admitted default, it follows that the Bank was entitled to appoint a receiver. This ground by Midlands therefore fails.
 14. I also note that the Bank has challenged the authority of Midlands’ directors and their current advocates, M/s Jude & Sheila Associates, to bring the application. It submits that upon the Appointment of the Receiver on 6th November 2024, Midlands’ directors ceased to have any powers to deal with Midlands’ assets or to issue instructions to any law firm to act for the Company in this matter. Thus, the Bank have stated that this application seeks to directly interfere with the Receiver’s functions, contrary to the debentures that created securities over all Midlands’ assets for the Bank.
 15. Midlands addresses this challenge by submitting that the firm was appointed on 27th July 2024 which precedes the receiver appointment on 6th November 2024 and that receivership operates prospectively, not retroactively, and does not annul actions lawfully taken by a Company’s board before the receiver assumes control and that the law recognizes the legitimacy of corporate acts undertaken before a Company is placed under receivership.
 16. The general principle is that once a Company has been placed under receivership it lacks the legal competence to institute a suit or be sued in its Company name. It can only sue or be sued through the Receiver and not the directors of the Company. This is because the Directors of the Company have been temporarily put on the back seat so far as the management of the Company is concerned (see *Cyperr Enterprises Ltd V Metipso Services Ltd & 2 Others* [2011] *KeHC 2652 (klr)*). Whereas Midlands submitted that the advocates were appointed on 27th July 2024 before the receivership, the Board Resolution annexed in its affidavit as “SMH –“1 authorizing these proceedings and instructing the said firm of advocates, is dated 22nd November 2024 and was passed by the directors after the receiver had taken control, a period during which their authority to manage the Company’s affairs and to instruct advocates for this purpose had been superseded. I am therefore in agreement that the firm of M/s Jude & Sheila Associates Advocates was instructed, and this application was instituted, by Midlands’ board of directors that lacked the legal authority to do so at the material time.



17. As such, this application is incompetent and a nullity ab initio. It was filed in the name of Midlands by persons who no longer had the legal capacity to act for the Company in this matter. The proper party to bring any challenge or action concerning the receivership or the Company's assets would be the Receiver, Mr. Peter Kahi, or with his authority. On this preliminary point alone, the application is fatally flawed and must fail.

Conclusion And Disposition

18. In the upshot, the Court finds that the 1st Defendant lacked the legal capacity to institute these proceedings through its directors after the appointment of a receiver on 6th November 2024. The application is therefore incompetent and a nullity. Without prejudice to the aforementioned findings, the Court further finds that even if the application were properly before it, the 1st Defendant has not made out a case for contempt of Court against the 5th Defendant in respect of the orders of 29th January 2018 and 30th November 2023. It has also not made out a case for setting aside the Receiver's appointment.

19. Consequently, the Notice of Motion application dated 25th November 2024 is hereby dismissed. The costs of this application shall be borne by the 1st Defendant. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF OCTOBER 2025

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J.W.W. MONGARE

JUDGE

In The Presence Of

Mr. Gathu for the Plaintiffs.

Mr. Jude Onyango for the 1st Defendant/Applicant.

Mr. Kahora for the 2nd Defendant.

Mr. Mbaji for the 5th Defendant.

Mr. Wamae for the Receiver.

Amos - Court Assistant

