

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL MISC APPLICATION NO E 236 OF 2023**  
**MUNGAI NGARUIYA.....1<sup>ST</sup>**  
**APPLICANT**  
**WINFRED NG'ANG'A NGARUIYA.....2<sup>ND</sup>**  
**APPLICANT**  
**VERSUS**  
**PAUL MASILA**  
**KIMEU.....RESPONDENT**  
**AND**  
**OFFICIAL RECEIVER.....1<sup>ST</sup> INTERESTED**  
**PARTY**  
**DIRECTORATE OF CRIMINAL**  
**INVESTIGATIONS.....1<sup>ST</sup> INTERESTED**  
**PARTY**  
**RULING**

1. Before this court is an application dated 15<sup>th</sup> September 2023 seeking the following orders, that;

***“a. Spent***

***b. This Honourable Court be pleased to issue a declaration that the Respondent herein-Paul Kimeu is not qualified to act as an insolvency practitioner.***

***c. This Honourable Court be pleased to decline that as a consequence of being unqualified to act as an insolvency practitioner, any purported action of the Respondent as a liquidator in relation to Syokimau Farm Limited***

***is illegal, null and void including instituting or engaging in any legal action under the guise of being an administrator/insolvency practitioner of the wound up company.***

***d. Upon determination by the Court on order No 3 herein above, this Honourable Court does issue a declaration that any documents or pleadings filed by the Respondent in his purported capacity as the administrator/insolvency practitioner on behalf of Syokimau Farm Limited ought to be expunged from the court's records.***

***e. An injunctive order do issue this Honourable court barring the Respondent from acting on behalf or presenting himself as an administrator/insolvency practitioner for Syokimau Farm Limited.***

***f. The cost of this Application be provided for.***

2. The application is supported by the affidavit of Mungai Ngaruiya dated 15/09/2023 in which he contends that on 26/07/2013, a resolution was passed to voluntarily wind up the company and members agreed on the mode of distribution of the company assets and each member was allocated their respective share of the company's assets as per their share certificates. During this period, no administrator was appointed to manage any assets of the already wound up company and therefore the purported appointment of the Respondent is illegal and falsified; that

the Respondent has been representing himself to the public as an insolvency practitioner when he is not and has engaged in fraudulent activating including purporting to hold former titles of assets formerly belonging to a wound up company and filing suits in its name such as Machakos **ELC Case no E023 of 2021 and Machakos ELC Case number E033 of 2021.**

**3.**It was deposed that the Respondent is not a licensed insolvency practitioner as provided under the Insolvency Act no 18 of 2015 as read together with the insolvency Act No 18 of 2015 and on 11/02/2022, the Applicant requested the Official Receiver and requested for copies of various documents from the file that show that there have been complaints against the Respondent purporting to practice as an insolvency practitioner which was done and the complaints are under investigation by the 2<sup>nd</sup> Interested party. It was contended that the Environment and Land Court ruled that it had no jurisdiction to make a determination on the issues of the capacity of the Respondent being an official receiver and in Machakos ELC No E033, the court granted stay of proceedings on 30/08/2023.

**4.**In response to the application, the Respondent filed a Replying affidavit dated 2/02/2024 in which indicated that he denied all the averments in the Supporting affidavit. He contended that the suit company was registered sometime in 1965 and passed a special resolution for voluntary winding up on 26/07/2013. He contended that the company had 713 shareholders and they passed a unanimous resolution to appoint him as the liquidator and he was to appear in court on their behalf on any upcoming,

present or past wrangles, questions or litigation. He further contended that when he was appointed, the powers of the directors to manage the business ceased and the power to bring up suits has been reserved in section 734 on transitional provisions on winding up and insolvency under the Insolvency Act, 2015. He alleged that the minutes annexed were a forgery as they were undated; Elijah Kithimba, Peter M. Mbabu, Peter N Mbithi, Gregory Munayi and Nzioka Kiilu were not directors of the company at the time of winding up; his name as one of the directors was missing and one B Makenzie whom the Applicant alleged to have attended the meeting has denied the same.

5. It was deposed that the investigations commenced by the 2<sup>nd</sup> interested party in 2022 revealed that he was one of the directors and the complainants were found to have given false information to the police. That they agreed to settle the matter amicably through a settlement agreement dated 5/09/2022. Lastly, it was contended that no objection had been received either from the public in response to the winding up advertisement in the Kenya Gazette on 8/08/2013 under GN N No 11485 and therefore the only company that exists in running affairs of the company is that of the administrator.

6. The application was to be canvassed by way of written submissions but at the time of writing the ruling, none was on record.

### **Analysis and determination.**

7. This court has considered the Application and the affidavits for and against it and finds that the questions before the court are;

**a. Whether the Respondent was duly appointed as an administrator by the shareholders.**

**b. Whether the Respondent was qualified as an insolvency practitioner.**

**c. Whether the application has merit**

8. The Respondent alleges that he was appointed by a special resolution for voluntary winding up. From the minutes of the meeting that was held on 26/06/2013, the Respondent was indeed appointed as the Administrator and the minutes indicate as follows;

**“All members agreed that Mr. Paul Masila Kimeu best placed for the job because he knows each and every member since he was part and parcel of those who were placing )MARKS after subdivisions. He knows the history of farm for over 27 years.”**

9. Subsequently, there was a gazette notice in the Kenya Gazette of 8/8/2013 and a local newspaper, Standard newspaper informing the public of the voluntary winding up. Both parties make reference to the gazette notice. This was in accordance with **Section 272 (1) of the said Act**, which provided as follows;

**“When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette, and also in some newspaper circulating in Kenya.”**

10.As such, I find that the Respondent has proven that he was appointed by the board of directors of the company.

11.As to whether he was a qualified insolvency practitioner can only be found in the law. In 2013 when the resolution was passed, the Insolvency Act,2015 had not been enacted therefore this winding up in this case could only have been done pursuant to **Section 271 (2) of the Companies Act (Repealed)** which provided as follows;

***“(1) A company may be wound up voluntarily -  
(a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;***

***(b) if the company resolves by special resolution that the company be wound up voluntarily;”***

12.**Section 285 of the said Act** provided that the provisions of sections 286 to 294 shall apply in relation to a creditors' voluntary winding up which is the case before this court.

13. **Section 287 of the said Act** provided that;

***“The creditors and the company at their respective meetings mentioned in section 286 may nominate a person to be liquidator for the***

***purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:***

***Provided that, in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.”***

14. **Section 278 (2) of the same Act** provided that on the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof which is the Contention of the Respondents.

15. From my perusal of the Act, there were no qualifications for a liquidator at the time when this particular company was wound up therefore there can be no fault on the board in terms of the appointment of the Respondent. What comes next is to find out the consequences of such an appointment in light of the new Insolvency Act that was enacted in 2015 and amended in 2022

which clearly provides for the academic requirements for insolvency practitioners as follows in section 11;

***“(1) For purposes of section 6 (1) (a) of the Act, a person is qualified as an insolvency practitioner, if that person –***

***(a) holds a degree from a university recognized in Kenya; (b) has at least five years' relevant professional experience as a member of a professional body recognized under section 7 of the Act;***

***(c) has at least two years' experience in insolvency practice before commencement of the Act;***

***(d) has worked under the apprenticeship of an insolvency practitioner for at least four years; and***

***(e) satisfies the requirements of Chapter 6 of the Constitution.***

***(2) An advocate who has worked for the Official Receiver for not less than two years automatically qualifies to Act as an Insolvency Practitioner.***

***(3) The Official Receiver may waive the requirements set out under subregulation (1) (a) where the applicant has practised insolvency for at least ten years prior to the commencement of the Insolvency Act (Cap. 53).”***

16. **Section 12(7) of the Insolvency Act** is the culmination of the application process for one to be receiver, it provides that;

***“Upon receipt of the indemnity cover and bond specified under paragraph (6), the Official Receiver shall issue the applicant with the authorisation***

**certificate and shall subsequently publish the authorisation—**

**(a) in the Kenya Gazette;**

**(b) in at least one newspaper of wide national circulation; and**

**(c) the Official Receiver's website, the applicant's name and such other details of the applicant as the Official Receiver shall consider appropriate.”**

16. As per the letter dated 21/12/2021 Business Registration service wrote a letter to Directorate of Criminal investigations and noted that the Respondent was not an insolvency practitioner and therefore does not hold any license.

17. Letter to DPP by BRS indicates that he has been warned but continues to deal in liquidation of the company.

18. The question then is what is the distinction between an administrator and a liquidator, this was answered by the official Receiver, Mark Gakuru BRS in a letter to the Respondent dated 6/10/2021 which indicated as follows;

**“ Kindly note that the office of an administrator is distinct and separate from the office of a liquidator with each having separate mandates as well as responsibilities. As such, it would be both erroneous and misguided for you to purport to be in office as the administrator of the said company by virtue of the Gazette Notice dated 26<sup>th</sup> July 2013.**

**Moreover, the insolvency Act, 2015 prescribes that only a licensed insolvency practitioner can undertake insolvency assignments. Section 5 of**

***the Act prescribes that a person who, not being the holder of an authorization, purports to act as an insolvency practitioner in relation to a company or a natural person commits an offence.”***

19. The bridge between the old law and the new law is found in the transitional provisions of the Insolvency Act. **Section 736 (2)** provides that;

***Despite the repeal of the Companies Act, or of Parts VI to IX of that Act, those Parts, and any other provisions of that Act necessary for their operation, continue to apply, to the exclusion of this Act, to any past event and to any step or proceeding preceding, following, or relating to that past event, even if it is a step or proceeding that is taken after the commencement.”***

20. **Section 1024 (6) Companies Act** on the other hand provides that;

***“6) If—(a) any act, matter or process required or permitted to be done under, or for the purpose of, a provision of the repealed Act had been started before the commencement of this section but had not been completed before that commencement; and***

***(b) no provision of this Act corresponds to that provision of the repealed Act, the act, matter or process shall or (as the case requires) may be completed under that provision as if the provision had not been repealed.”***

21. **Section 238 (5) of the Companies Act (repealed)** is a proviso that stated as follows;

***“(5) Subject to the provisions of section 326, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.”***

22. In this case, its administrator was appointed before the new Company’s Act was enacted and from my perusal of the said Act, there were no requirements for one to be appointed as an administrator as is the case currently. Therefore all the acts of the administrator were covered by section 238 *supra*, this would include representing the company in court. I say this because based on the minutes relied upon which also went ahead to discuss his roles which include appearing in court if required to do so on behalf of members of Syokimau Farm Limited. There being no contradictory evidence or challenge to the minutes, it then settles the issue of his appearances in **Machakos ELC Case no E023 of 2021 and Machakos ELC Case number E033 of 2021.**

23. In the end, I find that on a balance of probabilities, the Applicants have not proven their case. The Administrator did not contravene the law and his actions before 2015 are legal. What the company ought to do is regularize the appointment of the liquidator in accordance with the law that is there currently.

24. The Application is found to be without merit and is dismissed. As Respondent did not participate there shall be no orders for costs.

File closed.

**Ruling read, signed and delivered virtually this 14<sup>th</sup> day of November, 2025.**

**E. N. MAINA  
JUDGE**

**IN THE PRESENCE OF:**

Ms Wanja for the Applicants

No Appearance for the Respondent

C/A: Geoffrey

ORIGINAL