Cytonn Investment Partners Five (CIP5 LLP) & another v Official Receiver (Civil Appeal E116 of 2024) [2025] KECA 1955 (KLR) (21 November 2025) (Judgment)

Neutral citation: [2025] KECA 1955 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL E116 OF 2024

PO KIAGE, GV ODUNGA & J MOHAMMED, JJA

NOVEMBER 21, 2025

BETWEEN

CYTONN INVESTMENT PARTNERS FIVE (CIP5 LLP) ..... 1ST APPELLANT

CYTONN INVESTMENT PARTNERS TWELVE (CIP12 LLP) .. 2ND APPELLANT

AND

THE OFFICIAL RECEIVER ..... RESPONDENT

(An Appeal from the Ruling and Order of the High Court at Nairobi (A. Mabeya, J) delivered on the 17th January 2024 in Insolvency Petition No. E063 of 2021)

JUDGMENT

1. This appeal arises the ruling of the learned Judge (A. Mabeya, J) delivered on 17th January 2024. The said ruling arose from the respondent's application dated 27th September 2023 in which the Official Receiver sought: to have the title documents for the Nai Civil Appeal No E116 of 2024 Page 1 of 31 property known as Riverun, located in LR No 5910, Ruiru ("the property") deposited with him; and that there be variation of the consent in relation to the apportionment of the joint venture Agreement in terms that 40.1 acres be apportioned to the Official Receiver acting as the Liquidator of Cytonn High Yield Solutions and Cytonn Real Estate Projects LLP and 59.08 acres to be registered in the name of Muiruri Laban Limited; and to be allowed to undertake valuation, division and sale of the property under the supervision of the Court.

2. In support of the application, the Official Receiver contended: that Cytonn Investments Management Plc ("CIMP"), Muiruri Laban Limited ("MLL") and Cytonn Real Estate LLP (Managing Partner) ("CRELLP") entered into a Joint Venture Agreement (JVA) dated 8th September 2016; that the terms of the JVA were that MLL was the registered proprietor of the property with 50% governing rights, CRELLP had the technical knowhow of the property and CIMP would raise funds for the project and they each acquired 25% rights; that pursuant to the JVA, Cytonn Investment Partners Five

LLP was registered with the sole aim of capital appreciation and development of the property; that Cytonn High Yields Solutions LLP ("CHYS") entered into a financing agreement with CIP12 LLP to loan the incorporated special purpose vehicle Kshs 1,000,000,000/- with the sole aim of meeting the needs of the land owner in the joint venture agreement; that on 30th May 2018, Cytonn Real Estate Project Notes LLP ("CPN") entered into a financial agreement with CIP LLP to loan the SPV Kshs. 100,000,000/- to facilitate the acquisition and development of the property in Ruiru known as Riverrun on Land Reference No 28223/3, Kiambu; that since the project did not take off, and vide an agreement dated 11th November 2022, the same was dissolved and the property was apportioned between MLL and CIMP; that in furtherance of this, the parties put up an advertisement in the daily newspapers to the effect that the project was impossible to proceed with; and that upon dissolution of the JVA, the parties resolved that CIMP & CRELLP jointly take ownership and possession of 40.43 acres of the property and MLL 59.08 acres.

3. It was recalled that, in its ruling delivered on 6th January 2023, the trial court preserved the property. The Official Receiver contended that the apportionment of the property as per the dissolution agreement had the effect of disadvantaging the creditors of CHYS and CPN.

4. In opposing the application, Cytonn Investment Partners Five (CIP 5LLP) and Cytonn Investment Partners Twelve (CIP 12 LLP) vide grounds of opposition dated 8th October 2023 in which it was averred: that CIP 5LLP and CIP 12 LLP were separate and distinct legal entities from CHYS which is in liquidation; that the property was not owned by CHYS; that CIP 5 LLP and CIP 12 LLP were capable of holding the property in their own name; and that as long as CIP 5 LLP and CIP 12 LLP remained solvent, the Official Receiver should follow due process for recovery of debts.

5. The application was further opposed by Kenneth Ochieng Macakiage who averred that he was an investor/purchaser of the off-plan development project; that the application by the Official Receiver infringed on his rights as a substantial investor in the property under consideration and would further affect innocent investors who were not part of the proceedings.

6. After considering the application, the learned Judge revisited the history of the dispute and in particular referred to the ruling dated 7th December 2023 and reiterated that to the extent that the promoters of the Companies under liquidation are the same as those of the Partnership LLPs or are closely related, and to the extent that the said Companies took monies from the public and 'lent' the same to the associated Partnership LLPs or SPVs with no security at all, the owners of the collapsed Companies as well as these related Partnership LLPs or SPVs cannot hide from the Court's torch as it seeks to find the monies of the unsuspecting public that was hoodwinked to invest in the collapsed Companies. It was his view that the court would invoke the doctrine of tracing and trace the creditors' monies to the properties acquired by the Partnership LLPs and SPVs and have the same returned to the public. He noted that those who invested in these collapsed Companies were languishing in painful poverty while the promoters of the Companies as well as the Partnership LLPs and SPVs were making rounds in these courts postponing the day of reckoning. He wondered where the Regulatory watchdog was when Kenyans sank their billions into this bottomless pit.

7. The learned Judge noted that in the application, the Official Receiver was exercising his right as a liquidator in seeking that the 40.43 acres of the preserved asset Riverun be vested upon him in order to dispose off the same and make recoveries for the creditors. The appellants, on the other hand, maintained that CIP 5LLP and CIP 12 LLP were separate and distinct legal entities from CHYS in liquidation, while Mr. Kenneth Ochieng was of the view that allowing the application would prejudice all the investors who had acquired the said property.

8. Reverting to the doctrine of tracing, the learned Judge held that it is a common law doctrine which allows a party to claim rights to an asset which has changed form with an attempt to conceal the initial asset and the transmission of legal claims to the proceeds of the sale of assets as well as any asset that may have been substituted. Citing (3d) 441 (Ont. H.C.J.), 10 O.R. (2d) 733, at para 67and Tracy v. Instaloans Financial Solutions Centres (B.C.) Ltd. 2010 BCCA 357, the learned Judge held that the doctrine of tracing is applicable where there is prima facie evidence that the funds invested by the promoters or investors could be located and established. He recalled that the court found that the collapsed Companies 'lent' huge sums of monies to the related Partnership LLPs and SPVs with no security at all and that these monies belonging to the creditors who had invested in the collapsed Companies was invested in the preserved properties. It was his finding that the appellants and Mr Ochieng had not dispelled the fact that the property and 'deal' between the parties to the transaction on the Riverun property used the monies of the collapsed Companies and that the share of the collapsed Companies or its Partnership LLPs and/or SPVs was what the Official Receiver was pursuing, which was the right thing to do.

9. The learned Judge noted, from the record, that MLL, CIMP and CRE LLP entered into a joint venture agreement dated 8th September 2016 with respect to the property and that in a financing agreement dated 30th May 2018, Cytonn Real Estate Project Notes LLP financed CIP 5LLP a sum of Kshs 100,000,000/-. However, the parties dissolved the arrangement on 11th November 2022 by which the ownership and possession of 40.43 acres and 59.57 of the property was agreed at. It was clear to the learned Judge that since it was not denied or controverted that the investors' funds amounting to Kshs. 100,000,000/- was used to purchase the 40.6 acres held by the CIM and CRE LLP in the property, the investors had a stake in the said property.

10. Recalling the court's ruling in Cytonn Real Estate Project Notes LLP v Official Receiver [2023] KEHC 12 (KLR) (Commercial and Tax) (6 January 2023) (Ruling) in which the court appreciated that at the time of liquidation, those SPVs would be given an opportunity to explain themselves on the Loan Notes held by CPN, it was noted that the SPVs/appellants have not given any concrete reasons as to why the assets could not be realized for the benefit of the investors. Since the money loaned to the two Companies had not been paid up, the learned Judge found that the only recourse left was for the said property to be vested in the Official Receiver for him to liquidate the same for the benefit of the languishing investors.

11. Accordingly, the learned Judge found merit in the application and allowed the same.

12. It is these orders that provoked this appeal which is based on the grounds that the learned Judge erred: in granting vesting orders on the assets of the appellants with the respondent; by making a determination that condemned the Appellants insolvent, without the appellants being taken through any insolvency proceedings, contrary to the *Insolvency Act* 2015; by assuming Cytonn High Yields Solutions LLP (in Liquidation) and the Appellants are one and the same entity; by failing to make a determination that the Appellants under the *Limited Liability Partnership Act*, 2011 are separate and distinct legal entity from Cytonn High Yields Solutions LLP with the capacity and right to own property in their own name, and deal with the property as it pleases; by wrongly applying the doctrine of tracing in the absence of any proof or making any conclusive determination as to any comingling of funds, fraud or the appellants and generally disregarding the fact that the applicants were corporate entities formed for legitimate business purposes hence arriving at an out rightly one-sided judgment; by concluding that the appellants are fraudulent entities engaging in fraudulent activities without interrogating/ outlining the elements of fraud; in disregarding the grounds of Opposition dated 8th October 2023 by the appellants and solely relying on the respondent's evidence; when he failed to consider the pre-insolvency entitlements and other interests in existence, which are contractual

obligations and confer rights to property to the various creditors or interested parties and which can only be set aside by a court of law, upon due examination under the provisions of the *Insolvency Act*; by ignoring the processes and procedures set out in the *Insolvency Act*, which processes are for the sole purpose of ensuring equitable and just treatment of creditors and the general objectives of the *Insolvency Act* precipitating a disorderly process; and that the judgment is against the weight of evidence

13. When the appeal came before us for plenary hearing on 30th April 2025, learned senior counsel, Mr Paul Muite, appeared with Ms Koile for the appellants while learned counsel, Mr Emmanuel Bitta, appeared with Ms Mugo for the respondent. Counsel informed us that they had filed their written submissions which they relied on entirely.

14. On whether the proper procedure for determining fraud was adhered to, it was submitted behalf of the appellants: that it is a well-established legal principle that fraud must be pleaded with precision and specificity as was affirmed in Vijay Morjaria v. Nansingh Madhusingh Darbar & Another [2002] eKLR; that despite fraud not being pleaded in the Official Receiver's application dated 27th September 2023, the court proceeded to determine the issue of fraud on its own volition based on unfounded background without proof or evidence; and that this was contrary to the decision in Gandy v Casper (1956) 23 E.A.C.A 139, where it was held that relief not founded on pleadings will not be given.

15. On whether the homeowners were denied the right to be heard, it was submitted: that the appellants' joinder application was never heard or determined, despite clearly demonstrating their interest and attaching sale agreements and a schedule of payments; that the court simply ignored their application and proceeded to deliver a ruling without taking into consideration the plight of bona fide purchasers for value, as the ruling would affect them; that this was contrary to Articles 50(1) and 159(2) of *the Constitution* and the holding by the Supreme Court in the case of Githiga & 5 others v Kiru Tea Factory Company Ltd (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023), Halsbury's Laws of England Fourth Edition Vol. 1 page 90 para 74 this Court's decision in in Onyango Oloo v Attorney General [1986-1989] EA 456 which restated Lord Wright's decision in General Medical Council v Spackman [1943] 2 All ER 337 as well as the decision in Ridge v Baldwin [1963] 2 All ER 66 at 81.

16. Regarding whether the doctrine of tracing was properly applied and whether the property rights of a bona fide purchaser for value were violated, reliance was placed on Black's Law Dictionary (9th Edition, p. 1629) OJSC Oil Company Yugraneft v. Abramovich & Ors (Rev 1) [2008] EWHC 2613 (Comm) (29 October 2008), McTaggart v. Boffo (1975) 64 D.L.R. (3d) 441 (Ont. H.C.J.), 10 O.R. (2d) 733, at para 67. It was contended that at the time of preparing the ruling and rendering its determination, the learned Judge had already perused the record and was aware of the pending applications by bona fide purchasers for value, who sought recognition of their proprietary rights and notified the Court of their interest in the subject property. According to the appellants, from the foregoing, it is apparent that the court was well aware that the chain of tracing had been broken, yet it chose to disregard this fact. Based on the case of Foskett -vs- McKeown (2001) 1 AC p.102 at PP 127- 130 it was contended that tracing is a process and not a remedy or a claim, which process is used to identify or demonstrate what happened to a claimant's property, identify who received the property and justify the claims that the proceeds can be properly regarded as his property. The decisions in the Ugandan case of Katende v. Haridar & Company Limited [2008] 2 E.A.173 and Weston Gitonga & 10 others v Peter Rugu Gikanga & another [2017] KECA 24 (KLR) were cited to highlight on the meaning of a bona fide purchaser for value without notice. According to the appellants, the application of the doctrine of tracing could also only have arisen where there was a trust as enshrined under the Section 25(2) of the *Land Registration Act* and the case of Njenga & 3 Others v Ndua & another (Civil Appeal 187 of 2017 eKLR, was cited to support the submission that the doctrine of tracing was improperly invoked. As a

result, it was urged that the assets purportedly vested in the Official Receiver through tracing must be reversed and returned to their rightful owners.

17. On the doctrine of Separation of legal Entities, it was submitted: that the doctrine of corporate personality, as established in Salomon Co. Ltd vs Salomon [1897]AC 22, affirms that a corporate entity has a separate legal personality from its members; that consistent with this principle, the Special Purpose Vehicles (SPVs), being duly registered partnerships under the Limited Liability *Partnerships Act*, are entities with a distinct legal personality, perpetual succession and the capacity to own property and conduct business independently; that this Court in Hannah Maina T/A Taa Flower vs Rift Valley Bottlers Limited [2016] eKLR and Re: Southard Limited [1979]3 ALL ER 565 reaffirmed the principle that corporate entities remain separate and distinct, even in cases where a related company is facing financial difficulties; that each SPV is separate from the others and operates under its own unique governance structure and board; that the court's failure to appreciate this distinction resulted in the improper commingling of liabilities and assets of the SPVs and the companies in liquidation; that by preserving and vesting the SPVs' assets in the Official Receiver of CHYS, the trial court unjustly imposed the liability of CHYS onto solvent independent SPVs, violating the doctrine of corporate separateness; and that this resulted in severe disruption to ongoing real estate projects, halted construction, and impeded the SPVs' ability to meet their financial obligations, including payments to the funding SPVs.

18. It was submitted on behalf of the respondent: that the legal basis for vesting the properties purchased through the funds drawn from CHYS in the Official Receiver is firmly rooted in Sections 444 and 445 of the *Insolvency Act*; that Section 444 expressly states that the Liquidator assumes control of all the property to which the company is or appears to be entitled; that through the very documents submitted by the appellants, there is a clear link of entitlement to the properties; that since Black's Law Dictionary defines a vesting order as "an order... passing the legal estate in lieu of a conveyance", this means that upon issuance of the vesting order, the Official Receiver became the legal custodian of the property known as the Riverun by operation of law; that CHYS and CPN which are the entities the investors were required to deposit their investments into were merely collection baskets, where their funds were collected, and applied for investments in independent Special Purpose Vehicles (SPV's) registered by Cytonn Investments Management (CIM); that in essence, there is nothing that these supposed separate legal entities can lay true claim to as they were bought through funds lent to them by CHYS and CPN; that the underpinning rationale of having the properties vested with the liquidator is to enable the liquidator, to effectively realize the properties and apply the proceeds for the benefit of the creditors in accordance with the objectives of the liquidation process to collect, manage, and dispose of the assets of the insolvent company for equitable distribution among creditors; and that there were still queries on whether the SPVs were structured as part of a broader scheme to obscure the location of creditor funds and frustrate recovery efforts, noting that Edwin Harold Dayan Dande and the Cytonn- related entities had refused to cooperate with both the administrator and now the liquidator.

19. The respondent further submitted: that following the ruling of the court vesting the properties with the Official Receiver, Edwin Dande and Cytonn proceeded to file a myriad of cases, the effect of which would lead to a stay of the liquidation process and further delay in recovery by creditors of their investment; that to further prove the impropriety of Edwin Harold Dayan Dande, and Cytonn, it should be noted that they oppose the Official Receiver's efforts to sell, but instead propose to take over the sale and distribute any proceeds thereto themselves; that the transparent and inclusive nature of an insolvency process would only be for the benefit of bona fide investors, which is contrary to what the appellants in the various applications would like.

20. The respondent asserted: that while the Cytonn bodies are, at least on paper; separate legal entities, the business conduct demonstrated among them proves clearly that in practice, there is no separation among them; that with the same individuals being in charge of all Cytonn entities, albeit under different guises, and the trust demonstrated by the lack of securities offered for billions of shillings advanced to the various entities, it is apparent that the Cytonns are not as separate as the appellants herein would have this Court believe; that whereas it is a long-standing legal principle that a company is in law, a separate person distinct entity as established in Salomon v. Salomon & Co. Ltd. (1897), there are exemptions to every rule, where the law allows deviation of this general rule i.e., where there is fraud, malfeasance, evasion of legal obligation or improper conduct; that courts are empowered to disregard the corporate persona when the same is used to shield fraud, wrongful conduct or evade obligations as enunciated in Ukwala Supermarket v. Jaideep Shah & another [2022) eKLR; that in determining separation between legal entities, resort ought to be had to the Supreme Court of the United Kingdom case in Prest (Appellant) v Petrodel Resources Limited and others (Respondents) [2012] EWCA Civ 1395 where the Court considered and outlined principles considered in piercing the corporate veil; that CHYS and CPN are the alter egos of these promoters and the SPVs, and this Court ought to disregard the prayers sought on treating the SPYs as separate legal entity.

21. According to the respondent, having already demonstrated the nexus between CHYS and CPN and the SPVs, i.e., through their formation and the commingling of funds, the High Court correctly applied the doctrine of tracing - which allows one to identify and follow the flow of property/assets, particularly in cases of misappropriation or wrongful conversion. W e w e r e u r g e d to uphold the application of this doctrine as it will allow both CHYS & CPN creditors to recover their funds as discussed in Lennox Industries (Canada) Ltd. v. Canada, 1987 CanLII 5321 (FC), [1987] 3 FC 338 and McTaggart v Boffo (1975) 64 D.L.R. (3d) 441 (Ont. H.C.J.), 10 O.R. (2d) 733, at para 67.

22. The respondent's view was: that the appellants are misguided in making the representation that the High Court made a finding and/or determination on the activities of the appellant and its promoters when it observed that the activities and structures employed by the Cytonn entities were "a scheme akin to fraud"; that the term means similarity to or resembling fraud, suggesting deceptive or dishonest practices, but not necessarily constituting the legal act of fraud itself; that it could also mean a pattern of behaviour that is designed to trick or mislead someone, potentially causing harm or loss; that while there is no application requiring the High Court to make a finding on fraud, this Court should find that there are parts to the decision rendered by the court which are 'obiter dictum'; that the observations of the trial court were obiter dicta and had no binding force and cannot constitute a substantive ground of appeal.

23. The respondent contended: that since the liquidator's mandate includes investigations to determine why a company went into insolvency, at the opportune time, the liquidator will conduct a forensic audit for purposes of determining why the company went into insolvency, at which point if there are inferences of fraud, misappropriation, siphoning and diversion of company funds etc, the Liquidator will make recommendations for recovery and/or prosecution of anyone found culpable and those proceedings shall follow the due process.

24. It was, therefore, the Official Receiver's submission that it is in the best interest of all parties herein for the preservation and vesting orders to be upheld and for the appeals to be dismissed.

25. We have considered the submissions made by the parties. The issues that call for our determination are: whether the proper procedure for determining fraud was adhered to, it was submitted behalf of the appellants; whether the homeowners were denied the right to be heard; whether the doctrine of tracing was properly applied and whether the property rights of a bona fide purchaser for value were violated; and separation of legal entities.

26. As regards the first issue, this Court in Civil Appeal No. E091 of 2024 (Consolidated with Civil Appeal Nos. Nai. E092, E093 & E094 all of 2024), which are related to the present appeal, expressed itself as hereunder:

> "We agree with the respondent that the learned Judge chose his words carefully. He stated that the two Companies were involved in a scheme which was akin to a fraud. Looked at wholistically, the learned Judge cannot be faulted for arriving at that conclusion which was not the same thing as saying that they two entities were involved in fraud. In this case, the Companies were collecting baskets into which the investing public was invited to pool their finances. The prime movers of the two entities were the 3rd appellant and Edward Dande. Once the amount was collected, it would be "loaned" to SPVs, themselves established by the 3rd respondent. The SPVs were supposed to identify projects into which the money collected was to be invested. The "loan" was supposed to be secured by legal charges on the projects. This was not done. In the meantime, the 3rd respondent executed a guarantee in favour of the investors. When the two entities ran into financial difficulties, the 3rd appellant and Dande sought protection from the court by way of an Administration Order proposing an Administrator to take over the administration of the two entities. It turned out that the Administrator had been retained by the two entities prior to his appointment, but this fact was never disclosed. The Administrator himself concluded that the two entities could not be sustained as going concerns and recommended their winding up. In these circumstances, surely the learned Judge cannot be faulted for concluding that the manner in which CHYS, CPN and the SPVs were conducting themselves was akin to fraud. Since there was no express finding of fraud the stringent standard of proof required in findings of fraud was not applicable."

27. While we agree that the learned Judge in the ruling which is the subject matter of this appeal remarked that fraud was committed, in light of our finding in the above matter, we agree with the respondent that the said finding was obiter. Our decision in the above consolidated decision reflects the correct position. A finding of fraud could only be conclusively made after the appellants present their claims to the liquidator.

28. On whether the homeowners were denied the right to be heard we similarly held in Civil Appeal No. Nai E927 of 2024 (Consolidated with Civil Appeal Nos. Nai. E928 of 2024, E929 of 2024, E930 of 2024, E931 of 2024, E932 of 2024, E934 of 2024 & E032 of 2025 - Benedicta Mukulu Musembi & Others v The Official Receiver & Others that:

> We have elsewhere in the judgement dealt with the grounds dealing with the rights of the purchasers and Debt Settlement Proposal. We emphasise that in his decision placing CHYS and CPN in liquidation, the learned Judge (Mabeya, J) expressly stated that:
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> "At the time of liquidation, those entities would be given a hearing either to dispute the Loan Notes or pay up the same. The Court must be sensitive and alive to the plight of over 3000 members of the public who sank their over Kshs.11 Billion into these projects and therefore lean towards a lesser evil, which is to preserve those assets for the time being."
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> This position applies with equal force to any person disputing the inclusion of its property in the liquidation process. The option, we reiterate, is not to challenge the liquidation process but to lay the claim before the liquidator. To decline to do so on the ground that the liquidator is not impartial is clearly unreasonable since any person dissatisfied with

the manner in which the liquidation process is being conducted may move the court for appropriate orders."

29. It is, however, contended that at the time of the delivery of the ruling there was an application that was filed by Kenneth Ochieng Macakiage for joinder which was pending and therefore he was condemned unheard. Since no decision was made on the said application, we cannot reverse the learned Judge based on an application on which no decision was made. In any case, in light of our decision in Benedicta Mukulu Musembi & Others v The Official Receiver & Others (supra), the said applicant and, like any other persons in his shoes, is at liberty to make their claims to the liquidator for consideration.

30. Regarding the application of the doctrine of tracing and the issue of separate legal entities, in Benedicta Mukulu Musembi & Others v The Official Receiver & Others (supra), this Court found and we reiterate, that:

> " upon appointment, the liquidator is mandated to take control of, not only the property to which the company is entitled but also those properties to which the company appears to be entitled. In the latter case, of course, those who claim that the property in question does not belong to the company are at liberty to place their objections. Such objections re to be placed with the liquidator, with the claimant adducing evidence on the basis of which the claim is made.
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> In this case, the history of these proceedings reveals that on 6th January 2023, the court placed CHYS and CPN under liquidation. Before then, the said entities were, on an application made by their promoters, Cytonn Investments Management Plc (CIMP) and Edwin Harold Dayan Dande, placed under administration. The administration did not yield any positive results and hence the liquidation. In the application for administration the SPVs were identified as the ones to whom the two entities had advanced the money collected from the investing public. Whereas the said sum was lent out to the SPVs, registered by CIMP and Dande, on the understanding that the SPVs would register legal charges on their properties in favour of CHYS and CPN, that was not done. In the foregoing circumstances, we find that the Official Receiver was entitled to take the view that the properties of SPVs were acquired with the sum advanced to them by CHYS and CPN. While it may well be true that the SPVs relied on finances received from elsewhere, that is an issue that can be dealt with in the process of liquidation. It was upon the SPVs and their financiers to prove that part of the assets acquired by them were as a result of contributions by third parties, either wholly or in part. It cannot be a ground for faulting the decision to vest the properties of the SPVs in the 1st respondent for the purposes of their preservation pending either distribution to the creditors or release of whatever portion is found not to belong to the two entities, based on the evidence adduced. The learned Judge was alive to this fact when she expressed herself as hereunder:

'The SPVs have yet to demonstrate that the subject projects are independent of the funds received from CHYS's creditors. Furthermore, CHYS's influence over the SPVs, exercised through its CEO, Edwin Dande, remains unbroken. Significant concerns persist regarding whether the SPVs were deliberately structured as part of a broader scheme to obscure the location of creditor funds and frustrate recovery efforts. With these unresolved issues, the SPVs cannot rely on the doctrines of corporate separateness or privity of contract to shield themselves from scrutiny. They must move beyond these protective legal constructs and provide transparent answers to the creditors' questions. Such accountability cannot be achieved if the preserved properties remain under the control of CHYS, the SPVs, or their managers. It is therefore my finding that lifting or varying the preservation orders, as well as exempting the properties

in question from the liquidation process, which is intended to benefit the creditors as a whole, would significantly undermine the realization efforts being carried out by the Official Receiver. Such actions would further exacerbate an already precarious situation, potentially leaving creditors unable to recover their investments. For these reasons, I find that the SPVs have failed to provide any valid or justifiable grounds for the court to lift, vary, or set aside the preservation orders issued on 6th January 2023."

> We agree that the issuance of preservation and vesting orders are aligned with the liquidator's statutory duty to gather, manage and distribute the insolvent estate in a manner that ensures equitable treatment of all creditors. The management of assets necessarily requires that the liquidators take over the activities of the property in question so as to ensure that it is managed in the best interest of all the creditors. We do not agree that the liquidator's duty is to simply preserve the legal status of the property but that he cannot take over the management of the business being undertaken therein. To do so would mean that the assets under liquidation would not be fully under the control and management of the liquidator. This is in line with section 444 of the Act."

31. Based on the foregoing, we find no merit in this appeal which we hereby dismiss with costs.

32. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2025.

P. O. KIAGE

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JUDGE OF APPEAL JAMILA MOHAMMED

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.