

IN THE COURT OF
APPEAL AT
NAIROBI
(CORAM: KIAGE, JAMILA MOHAMMED & ODUNGA,
JJ.A.) CIVIL APPEAL NO. NAI E923 OF 2024
BETWEEN

CYTONN INVESTMENT MANAGEMENT PLC.....APPELLANT
AND
THE OFFICIAL RECEIVER.....RESPONDENT

(An Appeal from the Rulings and Orders of the High Court at Nairobi (A. Mabeya, J.) delivered on the 31st July 2024

in
Insolvency Petition No. E063 of 2021)

JUDGMENT OF THE
COURT

1. This appeal attacks the ruling of the learned Judge (***Mabeya, J)*** delivered on 31st July 2024.
2. The appeal is based on the allegations that the learned Judge demonstrated prejudgment and bias by making prejudicial remarks against the appellant, thereby unfairly influencing public perception and undermining the appellant’s right to a fair and impartial adjudication. The appellant therefore seeks, in its own words “a declaration be made that no determination of fraud

has been made against any registered Cytonn related entity or

their promoters, and therefore, they are not considered fraudulent entities and their workings and activities are not akin to fraud.”

3. The appeal is brought on two grounds. The first ground is that the learned Judge erred in both fact and law by concluding that the activities of the appellant and its promoters amount to a scheme akin to fraud. According to the appellant, this finding was made despite no fraud claim being pleaded, investigated or determined in the trial court. Moreover, the conclusion disregarded evidentiary standards, as no evidence of fraud was adduced in the trial court’s proceedings. The second ground is that the learned Judge erred in fact and law in determining that the appellant and its promoters engaged in fraudulent conduct. This finding, according to the appellant, appears biased, as it seems premised on a personal opinion rather than a lawful determination supported by evidence.
4. In Civil Appeal No. E091 of 2024 (Consolidated with Civil Appeal Nos. Nai. E092, E093, E094 & 103 of 2024) -

Cytonn

Investments Partners Sixteen LLP & 3 Others v The

Official Receiver, which are related to the present appeal,

this Court agreed:

“...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. Sine there was no express finding of fraud the stringent standard of proof required in findings of fraud was not applicable. This ground fails.”

5. This finding takes care of the two grounds of appeal raised herein and we need not say more.
6. This appeal fails and is dismissed with costs.
7. It is so ordered.

Dated and delivered at Nairobi this 21st day of November 2025.

P. O. KIAGE

.....
JUDGE OF APPEAL

JAMILA MOHAMMED

.....
JUDGE OF APPEAL

G. V. ODUNGA

.....
JUDGE OF APPEAL

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

Signed

DEPUTY

REGISTRAR.