



I&M Bank Limited v Zen Autocomp Kenya Limited (under Administration) (Commercial Case E013 of 2025) [2025] KEHC 17765 (KLR) (1 December 2025) (Ruling)

Neutral citation: [2025] KEHC 17765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL CASE E013 OF 2025
AA VISRAM, J
DECEMBER 1, 2025**

BETWEEN

I&M BANK LIMITED PETITIONER

AND

ZEN AUTOCOMP KENYA LIMITED (UNDER ADMINISTRATION) RESPONDENT

RULING

1. The Application dated 1st September, 2025, seeking to convert an administration to liquidation, has been considered. The application is not opposed. The Applicant has also presented a Liquidation Petition against the Respondent Company pursuant to Part VI of the *Insolvency Act*, 2015 which is not opposed.
2. The material placed before the Court shows that the company had previously been under administration. The administration has since been terminated in accordance with Section 595 of the Act and the administrator has vacated office.
3. As a result, the company presently has no officers in place to safeguard its assets. The Applicant contends that the company holds movable and perishable assets which are at real risk of dissipation or unlawful interference. It maintains that unless a provisional liquidator is appointed, the substratum of the petition will be eroded.
4. I note that the Liquidation Petition has been presented but has not yet been advertised. The Applicant therefore seeks interim protective relief pending compliance with the advertisement requirements under the *Insolvency Act* and Regulations.
5. The Application is brought pursuant to Sections 424, 425, 427, and 437 of the *Insolvency Act*. The said sections read together empower the Court, at any time after the presentation of a liquidation application, to appoint a provisional liquidator. Notably, presentation of the petition is the statutory



threshold for the grant of such orders. The Act does not require that the petition be advertised before the Court may exercise this jurisdiction.

6. The functions of the provisional liquidator sought in the present application are protective. The appointment is aimed at preventing loss, securing assets, and maintaining the company's value pending hearing of the petition.
7. In my view, this Court's protective jurisdiction may be engaged once a Liquidation Petition has been presented for the purpose of making of preservatory orders where urgency is demonstrated. In the present matter, the material before the court shows that the assets are vulnerable, the Applicant has called upon the Court to preserve value and prevent dissipation.
8. Section 437 of the *Insolvency Act*, 2015 confers this Court jurisdiction to appoint a provisional liquidator before or after making a liquidation order on the following terms: -
 - (1) The Court may appoint a provisional liquidator either on or after, or at any time before, the making of a liquidation order in respect of a company.
 - (2) Only the Official Receiver or an authorised insolvency practitioner is eligible for appointment as a provisions liquidator.
 - (3) A provision liquidator shall perform such functions and may exercise such powers as the Court may specify in the order appointing the provisional liquidator.
 - (4) The acts of a person appointed as provisional liquidator of a company are valid despite any despite any defect in the person's appointment or qualifications.
5. The purpose of appointing a provisional liquidator is to preserve the assets of a company pending the hearing and determination of the Liquidation Petition. This position is summarized in Palmer's Company Law (Vol. 1), 1982 at page 1250 where the learned author states as follows: -

“It is almost invariable practice to apply for a provisional liquidator on presentation of the petition and (assuming the petition is prima facie justified) to grant the application unless the petition is opposed on grounds which appear substantial. In considering whether to make an appointment, the court is concerned to make a status quo in affairs of the company and will attempt to avoid prejudice in either party. The provisional liquidator is normally the duly qualified accountant whom it is proposed should be appointed the official liquidator. The court will expect the Petitioner to have ascertained that he is willing to act before presenting the petition. If there is a dispute as to the proper person to be appointed, the court may nominate an independent person. The appointment may be recalled, but if the interlocutor recalling the appointment is the subject of an appeal the provisional liquidator remains in office until the reclaiming motion has been disposed off.”

5. The Court is also empowered by its inherent jurisdiction, read with Section 3 of the *Insolvency Act* and the overriding objective, to adopt measures necessary to maintain the status quo and safeguard assets pending full hearing of the petition.
6. In the present matter, the administration has ended. There is no officer of the company with lawful authority to preserve or manage the assets. That vacuum, in an already distressed company, creates an immediate risk of loss.



7. The Applicant has demonstrated that the assets are exposed, susceptible to interference, and diminishing in value. Delay until advertisement would serve no useful purpose and may render the eventual hearing of the petition nugatory.
8. The threshold under relevant sections allow for the appointment sought is preservatory in nature and does not determine rights between the parties.
9. In these circumstances, the Court's duty is to safeguard assets and ensure the petition is not defeated by events occurring in the interim. I am therefore satisfied that the circumstances justify the appointment of a provisional liquidator to avert the risk of dissipation of assets and to maintain the company as a going concern.
10. The Liquidator shall however, prior to sale of any assets, file an affidavit in court showing where, and to whom, the proceeds of the liquidation are to be applied. The above direction is made noting that the directors of the company are unavailable at this time, and that it is not clear if there are any other secured or unsecured creditors affected by the liquidation.
11. Further, the advertisement and gazette of the notice of petition shall take place prior to the hearing and determination of the petition and before final liquidation orders are made.
12. Accordingly, the Court orders as follows: -
 - a. A provisional liquidator is hereby appointed pursuant to Section 437 of the [Insolvency Act, 2015](#), with immediate effect.
 - b. The provisional liquidator shall exercise the powers only necessary for the preservation of assets and the protection of the company's value.
 - c. The Applicant shall proceed to advertise the petition in accordance with the [Insolvency Act](#) and Regulations within the next 60 days.
 - d. The matter shall be mentioned on 9th March, 2026, to review the report of the provisional liquidator in accordance with the orders above.
 - e. Ms. Diana Mumo is appointed interim liquidator as prayed for in prayer no. 3 of the Application.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 1ST DAY OF DECEMBER, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

Court Assistant: Lispa

.....for Petitioner

.....for Respondent

