

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT KISUMU
CAUSE NO. 293 OF 2015

(Before Hon. Justice Dr. Jacob Gakeri)

PAMELA **NELIMA** **LUTTA.....**
.....**CLAIMANT**

VERSUS

MUMIAS **SUGAR** **CO.** **LTD.....**
RESPONDENT

RULING

Before the court for determination is the applicant's Notice of Motion dated 3rd July 2025 filed under Certificate of Urgency seeking Orders that:

1. Spent.
2. Spent.
3. *The court do stay the delivery of ruling on the Applicant's Bill of Costs dated 16th June 2025 and allow the Defendant to file a response to and submissions on the Applicant's Bill of Costs.*
4. *The costs of this application be in the cause.*

The Notice of Motion is expressed under the inherent power of the court and no provision of law was cited or relied upon.

The Motion is based on the grounds set forth on its face and the Supporting Affidavit sworn by Patrick Mutuli who deposes that he was the Legal Officer of Mumias Sugar Co. Ltd (In Receivership) under a Receiver appointed by the Kenya Commercial Bank on 20th September 2019 Mr. Ponangipalli Venkata Ramano Rao.

The affiant further depones that on 1st July 2025 he received an email from one Samuel Kiptum, an ICT Officer of Mumias Sugar [2021] Ltd forwarding an email which had a Ruling notice, from the applicant, which the affiant forwarded to the law firm with instructions.

That the applicant served the Bill of Costs on the wrong entity and the respondent had no opportunity to defend itself and the address of the receiver manager was tact@tactkenya.com and no email had been received on the address or personal service effected.

That the affiant instructed counsel that the court ought not to allow it be condemned unheard as the ruling would

place at risk of attachment the respondents assets and any execution would be unlawful.

That the bill of costs arose in 2018 when the respondent was not in receivership and the legal status of the respondent had changed.

The affiant deponed that the respondent ought to be accorded an opportunity to respond to the Bill of Costs.

Respondent's case

Vide an Affidavit sworn on 30th October 2025 Mr. George Sino deponed that he filed the Bill of Costs dated 16th May 2025 and was issued with a taxation date and served on 20th May 2025 vide email address msc@mumias-sugar.com and to counsels address bruceodenyoadvocates@gmail.com on even date and thus the applicant was aware of the service and failed to participate on 22nd June 2025 and ruling notice was given for 24th June 2025 vide email address msc@mumias-sugar.com, info@mumiassugar.com and sales@mumiassugar.com.

That the applicant was a limited liability company capable of suing and being sued in its own name and the

appointment of receiver did not make it a different legal entity for recovery of debts and the receiver was appointed to secure KCB Ltd's interests only and execution is lawful and the instant application was a delaying tactic.

Applicant's submissions

Counsel for the applicant submitted that the applicant was not served with the Bill of Costs and taxation notice but it was served on Mumias Sugar [2021] Ltd, a separate legal entity and learnt of the matter barely 6 days before the ruling date and filed the application to arrest the ruling as it had been deprived of the right to respond to the Bill of Costs for absence of service.

Reliance was placed on the provisions of Article 50 of the Constitution of Kenya and the sentiments of the court in **Gamadid Trading Co. Ltd V Garissa County Government & 3 others** [2017] KEHC 4241 (KLR), **Singh Gitau Advocates V Kenindia Assurance Co. Ltd [2024] KEHC 14515** (KLR) and **Samuel Murithi Watatua & another V Republic [2012] KEHC 2802** (KLR) on extension of time to file a reference and absence of service.

Counsel further urged that the respondent herein stood to suffer no risk if the applicant was allowed to respond to the application.

Respondent's submissions

Mr. George Arunga Sino cited unidentified provisions of the Insolvency Act on the definition of a Receiver to submit that the appointment of a receiver did not alter or change the legal status of the Applicant/Respondent as only the management changed as held in **Republic V Lucas M. Chairman Betting Control & Licensing Board & 4 others, Ex Parte Interactive Gaming and Lotteries Ltd** [2017] eKLR to reinforce the submission.

According to Mr. Arunga, the law did not require service of pleadings to be effected on the Receiver Manager.

On service, Mr. Arunga submitted that he served on email by dint of Order 5 Rule 22B of the Civil Procedure Rules, to their email addresses, which the applicant/respondent had not controverted and Mr. Patrick Mutuli was the legal Officer of Mumias Sugar Co. Ltd (In Receivership).

Reliance was also placed on the decision in **Justus Mutumwa & Karani Muvema & 3 others V ODPP & Attorney General** [2025] eKLR on service via email.

According to Mr. Arunga, the email address the respondent used for service of ruing notice was used for the Bill of Costs and taxation notice, hence service had been effected.

Mr. Arunga reiterated that there was no legal requirement that once a receiver is appointed they take over the affairs of the company including service of documents, to urge the court to find that proper service was effected on the applicant.

Analysis and determination

It is common ground that by a Deed of Appointment of Receiver, Mumias Sugar Company Limited, the Kenya Commercial Bank of Kenya Ltd, pursuant to an Inter Lenders Agreement dated 27th September 2010, appointed Mr. Ponangipalli Venkata Ramano Rao of Tact Consultancy Services of P. O. Box 51 00623 Nairobi, Kenya, Receiver and Manager of the property and assets of the company charged by the KCB Debentures, on 20th September 2019.

By design, the applicant filed only 6 pages of the Deed of Appointment of receiver which excluded the terms of appointment and scope of the Receivers powers over the company as opposed to the assets. Similarly, it did not attach a copy of the legal notice under which the Receiver Manager was appointed.

These documents would have given the court a clear appreciation of the authority and responsibilities of the Receiver Manager and in particular in relation to dealing with 3rd parties in respect of liabilities by the company.

As correctly contended by Mr. Arunga, when a Receiver or Receiver Manager is appointed by or at the instigation of debenture holders as was in case, the legal status of the company does not change, save for the addition of terms (In Receivership) at the end of the company's name to signify that status as far as transactions with 3rd parties were concerned as well as management.

Significantly, leave of the court to file proceedings against the company is required.

See in this regard **David Nderitu Gathungu V Chase Bank (In Receivership) & 2 others** [2018] eKLR,

Charity Wangui Ngumo V Chase Bank Ltd (In Receivership) and Artique Action Agencies [2018] eKLR and Adrew G Muchai v Chase Bank Ltd [2016] eKLR, on the need to seek leave of the court prior to commencement of a suit against a company under receivership.

The sentiments of court in **Republic V Chairman Betting Control & Licensing Board & 4 Others Ex Parte Interactive Gaming and Lotteries Ltd** (supra) cited by Mr. George Arunga are spot on thus:

“Receivership is not to be equated to liquidation. Receivership does not change the legal status of the company. It only changes the management of the company which is removed from the hands of directors and placed in the hands of the receiver or managers”.

These sentiments answer the respondent’s issue of service upon a company under receivership.

Under Order 5 Rule 3 of the Civil Procedure Rules

Subject to any other written law, where the suit is against a corporation the summons may be served – (a) on the secretary, director or other principal officer of the corporation; or (b) if the process

server is unable to find any of the officers of the corporation mentioned in rule 3(a)—...”

Relatedly under Order 5 Rule 22B of the Civil Procedure Rules

- (i) Summons sent by Electronic Mail Service shall be sent to the defendant's last confirmed and used E mail address.**
- (ii) Service shall be deemed to have been effected when the Sender receives a delivery receipt.**

First, the respondent served the Bill of Costs and taxation notice to general email addresses and which he had not confirmed or used namely; mc@mumias-sugar.com, info@mumiassugar.com and sales@mumiassugr.com.

There is no evidence to show that any of these addresses were used by any Director Secretary or Principal Officer of the applicant or the Receiver Manager and there was no delivery receipt.

Since the management of the company under receivership changes from directors to the Receiver and/or Receiver Manager, the Receiver becomes the

Principal Officer of the company and any must be served with all pleadings as they impact on his sphere of influence. The law does not permit selective execution against assets of a company under receivership as it would compromise the interest of priority creditors and in particular those whose interests led to the appointment of the Receiver or Receiver Manager.

Indeed, a company under Receivership ought to generally sue or be sued through the Receiver.

See **Dipchem East Africa Ltd V Karuturi Ltd (In Receivership)** [2015] KEHC 4489 (KLR) where Gikonyo J. stated

“Also as a matter of law, the appointment of receiver manager is registered in the company registry as a matter of public notice to all who will be dealing with the company concerned...”

Involvement of the court and receiver is intended to ensure Orderliness.

Undoubtedly, and as contended by Mr. George Arunga, execution is a lawful processes but must be levied in accord with all applicable laws, including Insolvency law

where execution is against a company in receivership or winding up or liquidation.

Contrary to Mr. George Arunga' s submission that Mr. Patrick Mutuli admitted being a Legal Officer of Mumias Sugar Company Ltd (In Receivership), the email addresses used made no reference to the fact of receivership which is mandatory and as adverted to elsewhere, were all general addresses, including sales.

It is trite law that service is the bedrock of litigation and fair hearing. All pleadings and court documents must be served upon all other parties to the suit for their knowledge and response. It cannot be assumed and that's why there are process servers. Absent service or proper service, the right to fair hearing is implicated and any decision made without service or proper service is liable to be set aside as it is irregular.

Importantly, the respondent herein knew or ought to have known that Mumias Sugar Co. Ltd was under Receivership, and thus serve the Receiver Manager as opposed to the company itself.

Evidence on record reveals that he served neither the Company nor the Receiver Manager.

In the court's view proper service ought to have been effected by the respondent herein, but failed to do so, which vitiated the proceedings.

Flowing from the foregoing, it is decipherable that the applicant herein has a sustainable case.

However, this court has no jurisdiction to dictate to the Deputy Registrar how to proceed with a taxation of Bill of Costs, which is a special jurisdiction conferred upon Deputy Registrars as magistrates.

Procedurally, this application ought to have been made before the Deputy Registrar for a decision and if the applicant felt aggrieved, file a reference before this court, which is to all intents and purposes an appeal.

More importantly, Deputy Registrars when acting as taxing officers have powers to hear and determine all issues that arise in the course of the taxation.

For these reasons, the application is declined.

Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT
KISUMU ON THIS 2ND DAY OF DECEMBER 2025.**

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty

of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI
JUDGE

ORIGINAL