

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NO E005 OF 2023

TAILORS AND TEXTILES WORKERS UNION.....
CLAIMANT

VERSUS

RITZ ENTERPRISES LIMITED.....1ST
RESPONDENT

ANANT BHATT LLP.....2ND RESPONDENT

KAMAL BHATT.....3RD RESPONDENT

RULING

1. The Claimant Trade Union filed the instant suit on behalf of its members (including the Applicants in the application dated 22nd April 2024) against the Respondents to claim for their terminal dues after they were allegedly declared redundant by the 1st Respondent. The Claimant contends that after the 1st Respondent's sole Managing Director passed away, it (the 1st Respondent) was placed under statutory management following which, the 3rd Respondent was appointed as its administrator.
2. The Claimant alleges that the 1st Respondent's employees were not allowed to resume work after the latter's Managing Director died. As such, it contends that the employees were technically declared redundant.
3. The Claimant contends that despite this development, the employees were not paid their terminal dues. It asserts that efforts to have the matter resolved amicably yielded no fruit thus necessitating institution of these proceedings to pursue the unpaid benefits.

4. The record shows that the Respondents entered appearance in the cause through the Law Firm of Waithaka & Associates. However, they have yet to file a defense to the suit.
5. It appears that after the Claimant instituted the action, it did not actively pursue the matter. As a result, some of the employees who were being represented by it in the action filed the application dated 22nd April 2024 to seek leave of the court to represent themselves in the matter.
6. In reaction to the application, the Respondents filed the Notice of Preliminary Objection dated 26th February 2025. They contend that because the 1st Respondent is under liquidation, the case cannot be prosecuted without leave of the Insolvency Court. As such, they aver that this court has no jurisdiction to entertain the action.
7. The Respondents rely on section 432(2) of *the Insolvency Act* to anchor their objection. The provision states as follows:-

“When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate.”
8. From this provision, it is apparent that once a liquidation order is issued against a company, legal proceedings against it can only be commenced with the leave of the court. Similarly, where there were ongoing proceedings at the time the liquidation order was made, they can only continue with the permission of the court.

9. The Respondents contend that because the 1st Respondent is under liquidation, the Applicants ought to have sought leave of the Insolvency Court to file their application dated 22nd April 2024. It is their case that filing of the application constitutes continuance of proceedings against a company which is under liquidation.
10. In the aforesaid application, the Applicants affirm the fact that the 1st Respondent is indeed under liquidation (see the averments in the Certificate of Urgency dated 22nd April 2024). As such, there is no dispute that the 1st Respondent is indeed under liquidation.
11. Under section 2 of *the Insolvency Act*, the phrase “the Court” means the High Court, or the insolvency division of that court. As such, reference to “the Court” in section 432(2) of the Act denotes the High Court or the insolvency division of the High Court. Consequently, it is clear to me that the Applicants need to seek permission of the High Court to prosecute the application dated 22nd April 2024.
12. Nevertheless, *the Insolvency Act* does not state that if leave of the High Court is not obtained to continue with pending proceedings against a company in liquidation, the case becomes a nullity and thus amenable to be struck out. In my view, such proceedings are only stalled pending the grant of leave by the High Court to progress them.
13. Indeed, this is what the court indicated to be the position in the case of ***Owino Kojo & Co Advocates v Sifa Insurance Brokers Ltd [2024] KEHC 2691 (KLR)*** when it stated as follows:-

“The issuance of a liquidation order (winding up order under the repealed Act), typically results in an automatic stay on all ongoing civil proceedings against the company, except with the leave of the court or the consent of the liquidator. This means that any existing lawsuits or legal actions against the company cannot proceed without the court's approval.”

14. The parties to the instant action acknowledge that the suit was filed before the liquidation order against the 1st Respondent was issued. As such, they agree that it (the suit) was regularly filed.
15. However, during the pendency of the action, the 1st Respondent was placed under liquidation. Consequently, the liquidation order stalled an otherwise regular suit.
16. The situation would have been different if the suit was filed after the 1st Respondent had been placed under liquidation without first obtaining leave of the Insolvency Court. In such case, the action would clearly be incompetent and amenable to being struck out.
17. Having regard to the foregoing, it is apparent that the Respondents' contention that the suit is bad in law and ought to be struck out for failure to obtain leave of the High Court to progress it is misplaced. Because the suit was filed against the 1st Respondent before it was placed under liquidation, it is competent. However, since the 1st Respondent was placed under liquidation during the pendency of the action, the proceedings therein are, by law, stalled. For the Claimant or indeed any other party to take any further action in the matter, they require leave of the Insolvency Court.

18. It is up to the Applicants and or the Claimant to move the High Court to obtain permission to progress the suit. For the time being, the instant suit stands stalled until such permission is granted by the High Court.
19. If the Applicants and or the Claimant do not act on the matter, the Respondents reserve the right to move the court at the appropriate time to dismiss the cause for want of prosecution. Of course this will also be after the Respondents obtain leave of the High Court to take action in the matter.
20. Should neither of the parties move the High Court as indicated above, this court is empowered under rule 43 of *the Employment and Labour Relations Court (Procedure) Rules* to list the cause for dismissal for want of prosecution after the lapse of one year.
21. For the moment, the court will not strike out the suit or the application dated 22nd April 2024.
22. As such, the preliminary objection fails.
23. However and in view of the sentiments expressed above, the court is bereft of the requisite mandate to entertain the aforesaid application before the Applicants and or Claimant obtain leave of the High Court to progress this cause.
24. There is no order as to costs.

**Dated, signed and delivered on the 15th day of December,
2025**

**B. O. M. MANANI
JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI