

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**

**INSOLVENCY PETITION NO. E083 OF 2024**

**IN THE MATTER OF XPLICO INSURANCE COMPANY LIMITED  
(UNDER STATUTORY MANAGEMENT)**

**AND**

**IN THE MATTER OF THE COMPANIES ACT, 2015**

**AND**

**IN THE MATTER OF THE INSOLVENCY ACT, 2015**

**AND**

**IN THE MATTER OF THE INSURANCE ACT, CAP 487 LAWS OF  
KENYA**

**JUDGMENT**

**Introduction**

1. This judgment is in respect of a Petition dated 4th December 2024 brought by the Commissioner of Insurance, with the approval of the Board of the Insurance Regulatory Authority (IRA), seeking orders for the liquidation of Xplico Insurance Company Limited (Under Statutory Management) (hereinafter “the Respondent”).

2. The Petition is premised on the provisions of Sections 122 and 123 of the Insurance Act, Cap 487, Sections 424 and 384 of the Insolvency Act, 2015, and relevant provisions of the Companies Act, 2015.
3. The Petitioner contends that the Respondent is insolvent, has persistently failed to comply with the mandatory statutory requirements under the Insurance Act, including the Capital Adequacy Ratio (C.A.R) requirements. It is also contended that the Respondent is incapable of meeting its obligations to policyholders and creditors.
4. The background of the matter is that the Respondent, an insurance company incorporated on 23<sup>rd</sup> October 2009 and licensed to carry on general insurance business in Kenya, started experiencing significant governance and financial challenges, including shareholder disputes and inability to meet capital adequacy requirements as from 2015.
5. Following the shareholders' disputes and inability to meet the capital adequacy requirements, IRA intervened through various statutory mechanisms, including the appointment of statutory directors in 2016, issuance of notices of cancellation of registration, and engagements with shareholders to inject capital.

6. However, the interventions by the IRA did not yield any meaningful improvement. By 2020, the Respondent had a negative Capital Adequacy Ratio and a significant capital deficit (**Kshs. 1.7 billion deficit** as at August 2023).
7. On 8th December 2023, the Commissioner of Insurance placed the Respondent under statutory management pursuant to **Section 67C of the Insurance Act**, and the Policyholders Compensation Fund (PCF) was appointed as the Statutory Manager.
8. The Statutory Manager subsequently prepared a report recommending liquidation, having found that the Respondent was insolvent and incapable of revival. In particular, the Statutory Manager stated in its report that: -
  - i. As at 30th September 2024, the Insurer's Bank balances at Co-operative Bank Current Account No. 01191532031600 were Kshs. 6,073,084.10.
  - ii. As at 31st December 2022, the Insurer had assets amounting to Kshs. 3,549, 423, 560 out of which the total admissible assets were Kshs. 1,130,317,863 against total liabilities of Kshs. 2,414,427,486.00. Considering the minimum capital requirement of Kshs. 600,000,000.00, the Insurer's capital deficit was Kshs. 1,884,109,623.

- iii. The Capital Adequacy Ratio of the Insurer as of 31st December 2022 was -214%, which was below the minimum capital requirement of 100% pursuant to the provisions of Section 41 of the Insurance Act.
- iv. The Insurer has contravened the following mandatory provisions of the Insurance Act-
- (a) Section 27A (a): The Respondent had not appointed at least five (5) members of the board of directors.
  - (b) Section 29 (1); the Respondent failed to maintain adequate reinsurance arrangements and strategies approved by the Commissioner for Insurance in respect of liabilities.
  - (c) Section 41 (1); The Respondent failed to maintain the capital adequacy ratio of 100%. The Insurer had a ratio of -214%.
  - (d) Section 50; The Respondent failed to submit to the Commissioner an Investment Policy for the years 2022 and 2023.
  - (e) Section 54; The Respondent failed to submit to the Commissioner unaudited revenue accounts, balance sheet, profit and loss accounts, and statements of

total assets and total liabilities for the years 2022 and 2023.

- (f) Section 55 - Failed to keep proper accounting records.
- (g) Section 61 - Failed to submit the statement of assets and liabilities as of 31st December 2022, duly signed by the Principal Officer.
- (h) Section 67D - dealt with unregistered or unauthorised persons; dealt with unlicensed intermediaries, including Hussein Ali Shariff, Xperia Insurance Agency, and Baleon Insurance Agency.
- (i) Section 70 of the Act - spent expenses of management, amounts in excess of the prescribed limits. As of 31st December 2022, the management expenses ratio stood at 64%.
- (j) Section 197A and 197B; - Premium levies amounting to Kshs. 100,000,000 was still pending for payment as of October 2023. Additionally, the training levies of Kshs. 2,000,000 and PCF levies of Kshs. 6,000,000 were also pending payment.
- (k) Section 203 - failed to settle claims within a statutory period of 90 days.

v. It was further the Statutory Manager's report that: -

(a) There were no bona fide shareholders of the Insurer.

(b) The Insurer was unable to maintain its financial records prudently - the Insurer had 33 dormant bank accounts, 14 were closed, and 2 were garnisheed.

(c) The Insurer was unable to pay claims to policyholders and settle other debts due to third parties, and the then outstanding claims amounting to Kshs. 1,928,826,772.

(d) It had assumed risks in Kenya in respect of insurance business for which insurance premium payable thereon has not been received by the Insurer; As at 31st December 2022, the Insurer had premium receivables amounting to Kshs. 1,242,638,066 and receivables from related parties totaling to Kshs. 127,182,094.

9. From the foregoing, the Statutory Manager recommended that the Commissioner of Insurance pursue the Liquidation of the Respondent, hence the present Petition.

10. Following an application before this Court, a Provisional Liquidator, **Ms. Diana Mumo**, was appointed on 5th March 2025, under Section 425 of the Insolvency Act. Pursuant to this Court's directions, the Provisional Liquidator conducted a comprehensive audit of the affairs of the Respondent and filed a report dated 4 July 2025. The Report confirmed that: -
- (i) Liabilities (policyholder claims, trade creditors, and other payables) were Kshs 2.414 billion.
  - (ii) Assets (Net Book Value) amounted to approximately Kshs. 1.236 billion; actual cash was Kshs. 234,306,235.
  - (iii) There were 8,982 outstanding claims as at then, with a value of Kshs. 4,122,330,963.16 being admitted claims.
  - (iv) The company is both balance sheet and cash flow insolvent.
11. In support of the Petition, the Petitioner filed submissions dated 28 July 2025. The Respondent filed its submissions dated 30 September 2025, substantially conceding to the deteriorated financial position and sought the Court's discretion as to whether liquidation is warranted in the circumstances.

### **Analysis and Determination**

12. Having carefully considered the Petition, the affidavits, the reports of the Statutory Manager and the Provisional

Liquidator, and the submissions of the parties, the Court finds the following issues for determination:

- i. Whether the Respondent is unable to pay its debts within the meaning of Section 384 of the Insolvency Act and Section 122 of the Insurance Act;
- ii. Whether the statutory grounds for liquidation under Section 424 of the Insolvency Act and Section 123 of the Insurance Act have been satisfied;
- iii. Whether it is just and equitable in the circumstances to order the liquidation of the Respondent;

### **Whether the Respondent is unable to pay its debts**

13. The legal framework governing liquidation petitions includes Section 384(1) of the Insolvency Act, which provides that a company is deemed unable to pay its debts if, among others, it is proved to the satisfaction of the Court that a company is unable to pay its debts as they fall due.

14. Further, Section 384(2) of the Act provides that a company is insolvent where its liabilities exceed its assets. The provision states that: -

“A company is also unable to pay its debts for the purposes of this Part if it is proved to the satisfaction of the Court that the value of the company's assets is less

than the amount of its liabilities (including its contingent and prospective liabilities).”

15. In the context of insurance companies, Section 122 of the Insurance Act provides a statutory deeming provision that an insurer is unable to pay its debts if it fails to comply with the capital adequacy requirements under Section 41.

16. Section 41(1) of the Insurance Act provides:

“An insurer carrying on insurance business in Kenya shall at all times maintain the capital adequacy ratio of one hundred per centum.”

17. Section 122 of the Insurance Act provides as follows:

“For the purpose of section 384 of the Insolvency Act, 2015, an insurer is taken to be unable to pay its debts if at any time the requirements of [section 41](#) (which relate to margins of solvency) are not observed by the insurer.”

18. In the present case, the evidence before Court is unequivocal. The Statutory Manager’s report shows that the Respondent had admissible assets of approximately Kshs. 1.13 billion against liabilities of Kshs 2.41 billion, and the capital adequacy ratio stood at -214%. It is further clear from the said report that the outstanding claims exceeded

Kshs 1.9 billion, and that there exist thousands of unresolved policyholder claims.

19. Additionally, the Provisional Liquidator's report further confirmed that the expected claims exceed Kshs. 4.1 billion, while only a fraction of assets are liquid, and the Respondent is both cash-flow and balance-sheet insolvent.

20. These facts were not materially controverted by the Respondent. In fact, the Respondent, in its submissions, expressly admitted liquidity challenges and confirms that the heavy investment in land and equity has not translated into liquidity.

21. From the foregoing, it is therefore clear that the Respondent is unable to pay its debts within the meaning of Section 384 of the Insolvency Act and is therefore deemed insolvent under Section 122 of the Insurance Act.

### **Whether statutory grounds for liquidation have been met**

22. Section 424(1)(e) of the Insolvency Act permits liquidation where a company is unable to pay its debts. Further, Section 424(1)(g) provides for liquidation where it is just and equitable to do so.

23. Additionally, Section 123 of the Insurance Act empowers the Commissioner to petition for liquidation where: -

- i. The insurer is unable to pay its debts;
- ii. The insurer cannot meet the reasonable expectations of policyholders; or
- iii. It is just and equitable in the interests of policyholders.

24. In this case, the reports by both the Statutory Manager and the provisional liquidator reveal that the Respondent has persistently breached numerous statutory provisions, including:

- (a) Failure to maintain capital adequacy;
- (b) Failure to submit statutory returns;
- (c) Failure to settle claims within statutory timelines;
- (d) Poor governance and lack of a functional board; and
- (e) Non-compliance with regulatory obligations.

25. This Court adopts the reasoning in **Kiptum v Blueshield Insurance Company Ltd [2024] KEHC 7603 (KLR)**, where it was held that persistent failure to meet solvency requirements and regulatory obligations justifies liquidation. The Court (Mabeya J) stated that:

“From the record, it is evident that the respondent had been insolvent for some time and was unable to meet the regulatory requirements in the [Insurance Act](#). The record shows that, on several occasions, the company was given

opportunities to regularize the position and comply with the requirements of the law but failed to do so.

To the extent that the petitioner's evidence on the non-solvency of the company in accordance with the [Insurance Act](#) was not displaced, the Court holds that the company is insolvent. The contention that the company holds Kshs. 547 million did not displace the petitioner's contention that the verified liabilities of the company exceed Kshs 800 million."

26. Like in the ***Kiptum v Blueshield case*** (supra), evidence on record in the present case reveals that as at 4 July 2025 (see the provisional liquidator's report), the company is both balance sheet and cash flow insolvent. In particular, it was established that there were outstanding admitted claims totaling Kshs. 4,122,330,963.16. Further, the Respondent had liabilities in excess of Kshs. 2.414 billion against assets of approximately Kshs. 1.236 billion, with only Kshs. 234,306,235 being actual cash.
27. Evidence on record further reveals that the Respondent was granted multiple opportunities to regularize its position but failed to do so. In the premises, the Court therefore finds that the statutory grounds for liquidation have been fully satisfied.
28. As to whether the whether it is "just and equitable" within the meaning of Section 424(1)(g) to liquidate the Respondent,

this Court associates with the view expressed in the case of **Commission on Administrative Justice vs. Insurance Regulatory Authority & Another [2017] eKLR**, where Mativo J (as he then was) stated that:

“In Insurance is characterized as a business vested or affected with the public interest. Thus, the business of insurance, although primarily a matter of private contract, is nevertheless of such concern to the public as a whole that it is subject to governmental regulation to protect the public’s interests.”

29. The “just and equitable” ground is particularly significant in insolvency proceedings involving insurance companies, given the public interest nature of the industry. The insurance business is one imbued with public trust, as policyholders rely on insurers for indemnity against risk.

30. It is clear from the evidence on record that in this case, thousands of policyholders remain unpaid, and the Respondent is incapable of meeting future claims. It therefore follows that continued operation would expose the public to further loss. In any event, there is no viable recovery or restructuring plan.

31. The Court must therefore prioritise the protection of policyholders and the integrity of the insurance sector. In the circumstances, allowing the Respondent to continue operating

would undermine public confidence and occasion further prejudice.

32. I am therefore satisfied that it is just and equitable that the Respondent be liquidated. Accordingly, the Court makes the following orders:

- i. The Petition dated 4th December 2024 is hereby allowed.
- ii. Xplico Insurance Company Limited (Under Statutory Management) is hereby placed under liquidation.
- iii. The Provisional Liquidator, Ms. Diana Mumo Nduko, is hereby confirmed as the Liquidator of the Company.
- iv. The Liquidator shall proceed to wind up the affairs of the Company in accordance with the Insolvency Act, 2015.
- v. The costs of the Petition shall be borne out of the assets of the Respondent.

33. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI  
THIS 19<sup>TH</sup> DAY OF MARCH 2026**



**HON. JUSTICE MOSES ADO**  
*Judge of the High Court*

**In the presence of: -**

C/A - Moses

*Odongo Brian.....for the Petitioner*

*Odongo Allan.....for the Respondent*

*Mutua .....for the affected party*

*Njeri.....for the 1<sup>st</sup> Interested Party*

*Dr. Gitau.....for Interested Party*

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