

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
INSOLVENCY NOTICE NO. E106 OF 2024

**IN THE MATTER OF COPIA KENYA LIMITED (UNDER
ADMINISTRATION)
AND
IN THE MATTER OF THE INSOLVENCY ACT, 2025**

RULING

1. This is a Ruling arising out of the Application by **Copia Kenya Ltd** (*Under Administration*) seeking for the extension of the terms of the joint Administrators for a term of six months. The application is by way of a Notice of Motion dated 28/4/2025.
2. The application seeks the following prayers;
 - (1) *Spent*
 - (2) *THAT the Administrator's term of office be extended pursuant to **Section 594 (1) of the Insolvency Act, 2015** pending the hearing and determination of this Application.*
 - (3) *THAT the joint administrator's term of office be extended for another six (6) months pursuant to **Section 594 (1) of the Insolvency Act, 2025.***
 - (4) *THAT the costs of this application be in the cause.*

Background facts

3. The Company was placed under Administration on 21/5/2024. **Mr. Anthony Makenzi Muthusi** and **Julius Ngonga** were

appointed as the Joint Administrators of over the whole property of the Applicant/Company.

4. The terms of the Administrators ended on 23/5/2025. The Applicant thus moved to the Court seeking the extension of the terms the administrators. This is pursuant to **Section 594(1) of the Insolvency Act, 2025**.
5. The Application is opposed by **Tuffsteel Limited**, a Creditor.

Issues for Determination

6. The Court has considered the Application, the response in opposition, the written submissions, as well the oral highlights by Counsel for the parties.
7. The Court frames a single issue for determination as follows;
 - (a) *Whether the Court should extend the terms of the Administrators of the Applicant by a period of six (6) months.*

Analysis

8. This Court has been referred to **Section 594 (1) of the Insolvency Act, 2015** which states as follows;

Circumstances in which administrator's term of office can be extended

(1) Despite section 593 —

(a) on the application of an administrator, the Court may by order extend the administrator's term of office for a specified period; and

(b) an administrator's term of office may be extended by consent for a specified period not exceeding six months.

9. The term of the Administrators was set to expire on 23/5/2025.

10. **Section 593 of the Insolvency Act** states as follows;
593. Automatic end of administration
The appointment of an administrator automatically ends at the end of twelve months from and including the date on which it took effect.
11. On 4/9/2025, this Court extended the term of the Administrators until the next hearing date. This term was further extended by consent of the Counsel for the parties on 22/09/2025.
12. The prayer to extend the terms of the Administrator is provided for by **Section 594 of the Insolvency Act**. This Court is therefore vested with the jurisdiction to extend such time.
 - (a) *Whether the Court should extend the terms of the Administrators of the Applicant by a period of six (6) months.*
13. The Administrator depones that he is in the process of finalizing the sale of the assets of the Respondent, collecting the monies owed to the Respondent and resolving tax claims with the **Kenya Revenue Authority**.
14. A copy of the report for the period of August 2024 to February 2025 is attached to the application.
15. The Application is opposed by **Tuffsteel Limited** a creditor. This is through the Replying Affidavit of **Dev Mukund Patel** sworn on 6th August, 2025. He depones that no evidence has been led to show that the extension will lead or is necessary to achieve the purpose of administration. That no evidence has been led to show that the objectives of

Administration under **Section 522 of the Insolvency Act** will be met. This are among others to achieve a better resolution for creditors through realisation of assets, then say if the company was liquidated.

16. It is further deponed that no progress report has been provided. That rather than resuscitate the company, the Administrators seems to be depleting it.
17. The Respondent accuses the Administrators of inefficacies and hiding under a veil to avoid scrutiny.
18. The Respondent refers to the decision in **Cape Holdings Ltd (Under Administration) vs Synergy Industrial Credit Limited; I&M Bank Limited (creditor); Registrar of Companies (Interested Party (Insolvency Cause E049 of 2021) (2023) KEHC 18685 (KLR)**. That this power to extend the terms of an Administrator is an exercise in discretion. If nothing will come out of the extension, the same ought to be declined.
19. The Court has also been referred to the **Nakumatt Holdings Limited (2017) eKLR; Re Pan Paper Mills (In Administration) (2021) eKLR; Cyton High Yield Solutions LLP (In Administration) vs Official Receiver (Insolvency Petition E063 of 2021) (2023) KEHC 16 (KLR) and Re Victoria Furniture Ltd (2020) eKLR**. The Court was urged to avoid falling into the trap of extending the terms of Administration without any results.
20. The Court is urged not to extend the term.
21. On the other hand, the Appellant cites the decision in **Re Malde Holdings Limited (Insolvency Cause No E030 of**

2021) (2024) KEHC 1321 (KLR). That an Administrator seeking an extension must demonstrate how they carried out administration satisfactorily during the initial term.

22. In **Cape Holdings vs Synergy**, Hon. Mr. Justice A. Mabeya refers to the question of extension of the terms of an Administrator by citing the following cases;

"I now propose to deal with the main applications. The issues for determination are, whether the administration should be extended for a further 12 months or the same should altogether be terminated.

Courts have variously considered the issue of continued administration or termination of the same. In Re Nortel Networks UK Ltd [2017] EWHC 3299 (Ch), Snoden J held that:

'The Court's discretion under paragraph 76(2)(a) is not circumscribed in any express way, but it is readily apparent that it should be exercised in the interests of the creditors of the company as a whole, and that the Court should have regard to all the circumstances, including (i) whether the purpose of the administration remains reasonably likely to be achieved, (ii) whether any prejudice would be caused to creditors by the extension, and (iii) any views expressed by the creditors. In that regard, where a company is making distributions to its unsecured creditors within the administration process, it is likely to be appropriate that the administrator's term of

office should be extended to allow the distributions to be made, rather than to require the company to go into liquidation, which might well increase the costs or delay the distribution process with no countervailing benefit.” (Emphasis supplied).

In Re Biomethane (Castle Eaton) Ltd [2019] EWHC 3298 (Ch); [2020] BCC 111, Norris J buttressed the approach made by Snowden J and concluded that an extension was appropriate given: (i) the lack of prejudice to the only creditors with an economic interest in the administration, (ii) the consent of those creditors to the extension; and (iii) the fact that the objective of the administration still seemed likely to be achieved.

In Re TPS Investments (UK) Ltd (In Admin.) [2020] BCC 437, (a decision of HHJ Hodge QC sitting as a Judge of the High Court) laid out questions to be answered in order to grant an application for extension of an administration. He stated:

“In determining whether or not to accede to a paragraph 76(2)(a) extension application, ‘four questions tend to arise’. These are:

- (1) Why has the administration not yet been completed?*
- (2) Is any other alternative insolvency regime more suitable?*
- (3) Is the extension sought likely to achieve the purpose of administration?*

(4) If an extension is appropriate, for how long should it be granted?

Closer home, in Cytonn High Yields Solutions LLP (In administration) v Official Receiver (Insolvency Petition E063 of 2021) [2023] KEHC 16 (KLR), while considering whether to extend an administration, the Court found that the actions or inaction of the Administrator were prejudicial to the creditors. The Court was concerned with the interests of the creditors. It terminated the administration when it found that the administration was at its initial stages, 12 months into the administration.

The Court stated:

“From the foregoing, it is clear to this court that the actions and inactions of the administrator were not in the best interest of the creditors. They were contrary to the objectives of the Act. The administrator was more shielding the promoters of the company than acting in the best interest of the company and the creditors. In delaying to recover what was owed to CHYS, that was highly prejudicial to the creditors.

...

In the present case, the administrator has confessed that he has been unable to realize and recover the loan notes. All he has as assets for the company are loan notes (mere pieces of paper he’s been unable to enforce?). In my view, under the common law doctrine of tracing, the creditors would be entitled to

trace their funds into these projects. Let those properties be conserved/protected awaiting the realization of the assets of CHYS. Ruling otherwise would be to abate a possible fraud upon the creditors. This would be so because, the so SPVs may dispose of those projects to the extreme prejudice of the creditors whose monies was used to acquire them.

...

I have come to the conclusion that, the creditors interests was not taken into account and the administration is still under the initial stages. No satisfactory explanation has been given for the inordinate delay. By virtue of section 580 of the Act, the administrator had the power to take any action which was likely to contribute to the effective and efficient management of the affairs and property of CHYS. He has not performed his said duty to the satisfaction of the court.”

In Kimeto & Associates Advocates v KCB Bank Kenya Limited & 2 others (Insolvency Petition E004 of 2021), while considering removal of an Administrator, the court observed:

“When the Legislature enacted the Insolvency Act, 2015, it made it clear what the objectives of the Act are. They are clearly set out in section

522 of the Act. In this regard, all decisions made by the Insolvency Court as relates a company under administration must align to the said objectives. As a child is to a Family Court, so is a company under administration to the Insolvency Court; every decision must be made in the best interest of that company.

...

In this regard, an administrator must at all times align his decisions and actions with the best interest of the company. His duty and loyalty goes beyond the debenture holder who appoints him as such or as receiver. He must undertake his role in a manner that promotes the company as a going concern, where possible, to enable it repay off its debts and be discharged from administration and receivership.”

The totality of the foregoing is that, the power to extend administration is in the discretion of the Court. However, like all other discretions, the same must be exercised judiciously. The court will examine the purpose for which the extension is sought. The extension should be for the furtherance of the objectives of administration. That the administrator must be able to show the Court what he/she has done for the period of administration to justify the extension sought. What must have been done should be in tandem with the objectives of administration.

Further, where it is shown that the administrator has not acted towards achieving the objectives of administration, extension would be refused. Where it is also shown that the actions of the administrator are prejudicial to the body of creditors, no extension will be given. Further, where it is shown that nothing substantial has been achieved during the period of administration eg. by way of calling the first creditor's meeting, creating the creditor's committee, calling and identifying the total debt portfolio of the company, identifying and collecting the assets of the company and making a proposal on how to turn around the company under distress, no extension would issue.

It should be noted that, the enactment of the detailed Insolvency Act, 2015 and introduction of administration was a response to the then opaque, disastrous and ruinous receivership regime.

Throughout the history of commerce in independent Kenya, no receivership was ever successful. Receivers used to pounce on distressed companies and give them what Ringera J (as he then was) referred to as 'a kiss of death'. There was never any intention to turn around the fortunes of companies under distress. The receivers went in and made a kill for themselves.

In this regard, the Insolvency Act came in to address those ills. The Legislature was alive that in 12 months, a well-intentioned administration would show signs of either a turn-around for the distressed company or let it go into liquidation. It allowed extension for 6 months or 12 months where there were exceptional circumstances. An administrator is no longer the yester year receiver who would pitch tent in the distressed company and oversee its death. Administration is time bound. Period!

In this regard, an administrator who wishes to have his/her term extended must demonstrate to the Insolvency Court that, he/she has carried out the administration satisfactory for the initial term of the administration, that his/her actions have been towards achieving the objectives of administration as set out in section 522 of the Act, that his/her actions have been for the benefit of the body of creditors.”

23. The Court finds useful the questions posed in the **Re TPS Investments (UK) Ltd (In Admin.) [2020] BCC 437**. The same bear repetition as follows;

- (1) Why has the administration not yet been completed?*
- (2) Is any other alternative insolvency regime more suitable?*
- (3) Is the extension sought likely to achieve the purpose of administration?*

(4) If an extension is appropriate, for how long should it be granted?

24. The Court has perused the report to the Creditors of Copia Kenya Limited (under Administration). It is dated 28/3/2025. It is signed by the Administrators.

25. The Court notes that the process of realisation some of the assets of the company has commenced. Creditors meetings have taken place and creditors committee set up.

26. A summary of the next steps shows the main items remaining are the sale of the few assets remaining, debt collection and dealing with the **Kenya Revenue Authority** issues.

27. To this Court, this report does not portray a company that is in the High Dependency Unit (HDU) of Administration on its way to the general ward and ultimately discharged to go home. It paints a bleak picture of a company that is in the High Dependency Unit (HDU) being closely monitored with a view to heading to the Intensive Care Unit (ICU) and perhaps to the cold morgue thereafter.

28. The Court hesitantly allows the extension of the Administration but for a limited period of two (2) months from the date of this Ruling.

29. The cost will be in the cause

Determination

30. The Applicant's application dated 28th April, 2025 is allowed in the following terms;

a) *THAT the joint administrators' term of office be extended for another Two (2) months pursuant to **Section 594 (1) of the Insolvency Act, 2025.***

b) *THAT the costs of this application be in the cause.*

31.It is so ordered

DATED, SIGNED and DELIVERED at NAIROBI this 23rd day of APRIL, 2026.

NJOROGE BENJAMIN. K

JUDGE

In the presence of: -

Miss Kale for the Applicant.

N/A for Tuffsteel Ltd a Creditor.

Mr. Ouma for Jastan Traders Ltd a Creditor.

Mr. John Paul -Court Assistant.