



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
INSOLVENCY PETITION NO. E014 OF 2024

BETWEEN

ADAM MUTURI WANJAMA
PETITIONER/RESPONDENT

VERSUS

CARNET GENERAL MERCHANTS
LIMITED (*in Liquidation*)
RESPONDENT

AND

JOSEPH MAINA WANJOHI (*through his guardian ad litem*
ROSE WAIRIMU KARANJA) ... INTENDED INTERESTED
PARTY/APPLICANT

RULING

Background and Introduction

1. Through the application dated 30th September 2025, the applicant seeks to be joined in these proceedings as an interested party and further to be granted leave to prosecute **Narok High Court Civil Suit No. E005 of 2023** against Carnet General Merchants Limited (the respondent)

pursuant to **Section 423(2) of the Insolvency Act**. The application is supported by the affidavits of **Rose Wairimu Karanja** sworn on 30th September 2025 and 4th February, 2026.

2. The applicant's case, filed through his guardian ad litem, is that he became aware that on 13th June 2025, this Court issued a liquidation order against the respondent company and appointed the Official Receiver as provisional liquidator. Consequently, under **Section 432(2) of the Insolvency Act, 2015**, he is required to obtain leave of the insolvency Court to continue pursuing his suit against the respondent. He maintains that his claim, which was instituted before the liquidation, is meritorious and should be concluded promptly so that he may participate as a creditor in the liquidation process.
3. The applicant further explains that he was rendered incapable of speech and requires constant medical supervision and 24-hour home nursing care following a road traffic accident. The compensation sought in Narok **HCCC No. E005 of 2023** is essential to meet his monthly expenses,

including physiotherapy, speech therapy, nursing care, diapers, liners, medication, food, utility bills, and general maintenance. In light of these circumstances, he submits that it is in the interests of justice for this application to be certified urgent and for the orders sought to be granted.

4. The applicant further contends that in **Narok HCCC No. E005 of 2023**, the respondent is represented by the firm of G & G Advocates LLP, who were appointed by its insurer to act on its behalf. He maintains that, as a result, the respondent's estate will not be required to expend any resources in defending the suit if leave is granted. That the financial burden of defending the claim has always been borne by the insurer and will continue to be so, thereby ensuring that neither the estate nor the liquidator suffers prejudice.
5. The applicant further argues that the claim arises from a road traffic accident, and liability attaches not only to the respondent company but also to its insurer, who is legally obliged under **Section 10 of the Insurance (Motor Vehicles Third Party Risks) Act** to indemnify the insured.

6. The application was opposed through the replying affidavit of **Diana Mumo**, the provisional liquidator, sworn on 2nd December 2025. She confirmed having no objection to the prayer for joinder but strenuously opposed leave being granted on the basis that the company did not have any realizable assets and that any further expenses used in defending the said suit against the respondent would further strain the estate to the detriment of other creditors.

Analysis and Determination

7. At the time of writing this Ruling only the applicant had filed his written submissions which I have also carefully considered. In view of the fact that the prayer for joinder is unopposed, and considering the Orders of this Court granted on 27th October 2023 appointing Rose Wairimu Karanja as the legal guardian *ad litem* of the applicant, Joseph Maina Wanjohi, the applicant is hereby enjoined in these proceedings as an interested party.
8. That said, **Section 432(2) of the Insolvency Act** under which the application is brought provides that:

“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.”

9. As acknowledged by the provisional liquidator, the purpose of **Section 432(2) of the Insolvency Act** is to safeguard the orderly administration of a company’s affairs once liquidation has commenced. The provision ensures that the company’s resources, which are placed under the control of the liquidator, are not dissipated or diverted through multiple, frivolous, or uncontrolled legal proceedings. It establishes a structured framework whereby claims are subjected to the scrutiny of the Court, thereby enabling the liquidator to administer the estate in a fair and equitable manner for the benefit of all creditors.

- 10.** The requirement for leave serves to prevent individual claimants from obtaining an undue advantage by prosecuting their suits independently, and in so doing, upholds the principle of *pari passu* distribution of assets among creditors.
- 11.** In considering whether to grant leave, the Court must therefore consider whether the continuation of proceedings against the company will compromise the orderly administration of the liquidation, whether the proposed proceedings will impose any financial or administrative burden upon the liquidator and whether the issues raised are capable of resolution through proof of debt or require judicial determination. The Court must equally weigh the applicant's right to pursue a meritorious claim against the need to protect the estate from dissipation, duplication of litigation, or undue prejudice to the general body of creditors.
- 12.** Turning to the present case, it is evident that the provisional liquidator has not suggested that the applicant has successfully proved his debt. In any event, the dispute before the Court raises

substantive questions of liability and quantum which, by their very nature, cannot be resolved through the summary proof of debt procedure before the liquidator but require judicial determination.

13. From the pleadings filed, the applicant's claim cannot be said to be frivolous or vexatious. I have also had occasion to review the Company's statement of affairs and note that, at present, no realizable assets have been identified. Be that as it may, the applicant retains a right to share in whatever resources the liquidator may ultimately marshal from the estate, and the only avenue through which he can vindicate that right is by establishing his claim in the pending suit. To deny him leave would be to effectively bar his access to justice and exclude him from participating as a creditor in the liquidation process.

14. An even more compelling justification for the grant of leave is found in the applicant's submission that the respondent's insurer has, from the inception of the proceedings, assumed full responsibility for defending the claim. Consequently, neither the

estate nor the liquidator will be burdened with any financial obligation arising from the suit. This position is consistent with the insurer's statutory duty under **Section 15 of the Insurance (Motor Vehicles Third Party Risks) Act**, which obliges insurers to satisfy judgments against their insured in respect of third-party risks.

- 15.** It is further fortified by the decision of this Court in **Maundu & Another V Okoth (Suing as the Legal Representative of the Estate of the Late Billy Nyongesa Ogutu), [2025] KEHC 11603 (KLR)** wherein the Court held that:

“Subsection 4 expressly states that an insurer cannot avoid a contract of insurance made in respect of any liability of the insured to third parties, merely because of the happening of an insolvency event involving the insured. The sub-section states that such a contract is void. My reading of Section 15 above is that the suit against the

Appellants must proceed in order for liability of the insured to be determined first before a determination can then be made whether such liability would be transferred to or vest in the Respondents vis-à-vis the insurer. To stay the proceedings in the lower court would be prejudicial to the Respondents in view of the provisions.”

Disposition

16. Accordingly, and for the above reasons, the application dated 30th September 2025 is allowed and the following final orders do hereby issue:

- i. The applicant is hereby enjoined to these proceedings as an interested party.***
- ii. Leave is hereby granted to the applicant to continue the suit against the respondent Company placed in liquidation on 13th June 2025 being***

Narok HCCC No. E005 of 2023 Joseph Maina Wanjohi (Suing through his guardian ad litem Rose Wairimu Karanja) v Carnet General Merchants Limited.

iii. I make no orders as to costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 12TH DAY OF MAY 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Mugwe for IIP

Court Assistant: Lillian & Gloria