Mwalimu & 2 others (On their own behalf and on behalf of all members of Centi Kumi Residents Society) v Blueshield Insurance Company Ltd (Under Statutory Management) & 2 others (Enviromental and Land Originating Summons 136 of 2022) [2024] KEELC 3715 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3715 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIROMENTAL AND LAND ORIGINATING SUMMONS 136 OF 2022

NA MATHEKA, J

APRIL 25, 2024

BETWEEN

MWALIMU KASSIM MWALIMU ..... 1ST APPLICANT

OMAR MVVINYIHAJI GONGO ..... 2ND APPLICANT

AZIZ KAMBI ..... 3RD APPLICANT

ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF CENTI KUMI RESIDENTS SOCIETY

AND

BLUESHIELD INSURANCE COMPANY LTD (UNDER STATUTORY MANAGEMENT) ..... 1ST RESPONDENT

LANDS REGISTRAR MOMBASA ..... 2ND RESPONDENT

MANAGING TRUSTEES, POLICYHOLDERS COMPENSATION FUND ..... 3RD RESPONDENT

RULING

1. The application is dated 5th October 2023 and is brought under Section 560 (1) (d) of the *Insolvency Act* No. 18 of 2015 and Regulations 10 of the *Insolvency Regulations*, 2010 seeking the following orders;

    1. That leave be hereby granted to the Applicants, to continue with the suit against 1st Respondent on such terms as the Court may deem fit;

    2. That leave be hereby granted to the Applicants to enjoin The Managing Trustee, Policyholders Compensation Fund, Statutory Managers of the 1st Respondent.

3. That the costs of this application be provided.

2. It is based on the sworn affidavit of Mwalimu Kassim Mwalimu and the following grounds that the Applicants filed a suit against the 1st Respondent on 17th November, 2022 for orders declaring that the applicants have acquired the remainder of the lease of that whole parcel of land known as Mombasa/ms/block 1/274 by adverse possession. That before the matter was certified ready for hearing, the applicants were informed that the 1st Respondent had been placed under Statutory Management pending the determination of Winding Up Milimani High Court Miscellaneous Cause Number 238 of 2017. Consequently, the suit could not proceed. That the 2nd Respondent was appointed the Statutory Manager of the 1st Respondent and its term as such was extended by the High Court on 3rd November, 2017. That leave is hereby necessary to enjoin the 3rd Respondent in order to continue with the hearing or this suit against the 1st Respondent in the interest of justice. That the Applicant is ready and willing to abide to any conditions that may be fixed by this Court. The application was not opposed.

This court has considered the application and the submissions therein. The provisions of Order 1 Rule 10(2) and (4) under which the application is brought provides as follows;

(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise direct, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants".

3. The court of Appeal in *Civicon Limited vs Kivuwatt Limited & 2 Others* (2015) eKLR stated that;

> " the objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings".

4. A more succinct test to be applied in answering the question of joinder was pronounced by the Court of Appeal in *Central Kenya Limited vs West Bank Ltd & Others*, CA No. 222 of 1998 as follows;

> " the paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the question involved in the suit."

5. The Court of Appeal in *Meme vs Republic* (2004) KLR 637 outlined the following circumstances which would warrant grant of leave to enjoin a party;

(i) Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings;

(ii) Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and

(iii) Where the joinder will prevent a likely course of proliferated litigation."

6. In *Central Kenya Ltd vs Trust Bank Ltd & Others* CA No. 222 of 1998 the Court of Appeal held that;

> " the paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit."

7. Looking at the circumstances of this case, the applicants were informed that the 1st Respondent had been placed under Statutory Management pending the determination of Winding Up Milimani High Court Miscellaneous Cause Number 238 of 2017. The 2nd Respondent was appointed the Statutory Manager of the 1st Respondent and its term as such was extended by the High Court on 3rd November, 2017. That it is necessary to enjoin The Managing Trustee, Policyholders Compensation Fund, Statutory Managers of the 1st Respondent. I find that the Policyholders Compensation Fund, being the Statutory Managers of the 1st Respondent are necessary for the effectual and complete adjudication of all the question involved in the suit. From the foregoing I find this application has merit and I grant the following orders;

    1. That leave be hereby granted to the Applicants to enjoin The Managing Trustee, Policyholders Compensation Fund, Statutory Managers of the 1st Respondent.

    2. No orders as to Costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF APRIL 2024.

N.A. MATHEKA

JUDGE