



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Kamau v iProcure Limited; Muthusi (Proposed Interested Party) (Cause E197 of 2024) [2025] KEELRC 902 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 902 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E197 OF 2024
S RADIDO, J
MARCH 20, 2025

BETWEEN

BERNARD MAINGI KAMAU CLAIMANT

AND

IPROCURE LIMITED RESPONDENT

AND

ANTHONY MAKENZI MUTHUSI PROPOSED INTERESTED PARTY

RULING

1. Bernard Maingi Kamau (the Claimant) sued iPROCURE Ltd (the Respondent) on 14 March 2024, alleging unfair termination of employment and breach of contract.
2. On 27 January 2025, the Claimant filed a Motion seeking orders:
 - i. That leave be granted to the applicant to proceed and/or continue with the instant Claim/Suit against the Respondent.
 - ii. That Anthony Makenzi Muthusi of KPMG Advisory Services Ltd be enjoined as an Interested Party to this Claim for purposes of continuation of the suit.
 - iii. Costs of this application be in the cause.
3. The grounds in support of the Motion were that the Cause had been filed on 14 March 2024 but on 26 April 2024, the Respondent was placed under Administration and that under section 560 of the *Insolvency Act*, the Court needed to grant leave to maintain a claim against the Respondent since it was now under Administration.
4. The Court gave directions on the Motion on 28 January 2025 and the Administrator of the Respondent filed a replying affidavit on 4 February 2025.



5. In the affidavit, the Administrator challenged the jurisdiction of the Court to grant the order sought. According to the Administrator, jurisdiction lay with the High Court which was handling the Insolvency proceedings in Insolvency Cause No. E84 of 2024.
6. The Administrator further asserted that due to the financial crisis engulfing the Respondent, a moratorium had been placed on claims and granting the leave would defeat the objectives of the moratorium and Insolvency.
7. The Administrator indicated that he was not ready to give consent for the continuation of the proceedings.
8. The Claimant's submissions were not on record (should have been filed and served before 14 February 2025) and the Administrator filed his submissions on 25 February 2025.
9. On 17 March 2025, the Claimant filed a Notice to withdraw the Motion.
10. The Court however notes that when the Claimant commenced legal proceedings against the Respondent, it had not been placed under administration.
11. Section 560(1)(d) of the *Insolvency Act* outlines what should happen if a company in litigation has been placed under administration.
12. The section provides:

560(1) While a company is under administration —

 - (a) ...
 - (b) ...
 - (c) ...
 - (d) a person may begin or continue legal proceedings (including execution and distress) against the company or the company's property only with the consent of the administrator or with the approval of the Court.
13. The proviso contemplates two scenarios for commencing or continuing legal proceedings against a company under administration. One option is to secure the consent of the Administrator or get the leave of the Court.
14. The Administrator's objection that his consent must be sought is not correct. A Court has the discretion to grant the leave.
15. The Administrator also contended that it is the Insolvency Court that can grant leave. No authority for this postulation was disclosed.
16. The *Insolvency Act* defines the Court as the High Court or a division of the High Court dealing with insolvency disputes.
17. The *Constitution* of Kenya expressly guarantees access to justice. In this normative structure, should a party who filed proceedings with the Court with first instance jurisdiction move the High Court to grant leave to maintain legal proceedings before the Court with subject matter jurisdiction?
18. This Court thinks not. This Court has the status of the High Court when exercising its jurisdiction and it would be an impediment to the right to access justice and expeditious determination of disputes



without delay to expect parties before it to move the High Court to secure leave to continue legal proceedings against a company under administration.

Orders

19. The Motion dated is marked as withdrawn with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 20TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Nyanyuki & Co. Advocates

For Respondent Nyaanga & Mugisha Advocates

Court Assistant Wangu

