



**Chauhan v Comargo Supply Base (EPZ) Ltd (Cause E129 of 2023)
[2025] KEELRC 1236 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1236 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E129 OF 2023
M MBARÚ, J
APRIL 30, 2025**

BETWEEN

KAILESH NARVIN CHAUHAN CLAIMANT

AND

COMARGO SUPPLY BASE (EPZ) LTD RESPONDENT

RULING

1. The respondent, Comarco Supply Base (EPZ) Ltd filed an application dated 20 February 2025 under the provisions of section 560(1)(d) and 561 (3) and (4) of the Insolvency Act, Order 40 rule 1 and 2, Order 22 rule 51 and 52 and article 159 of the constitution seeking orders that;
 1. Spent.
 2. Spent.
 3. Spent.
 4. Pending hearing and determination of the application, the court be pleased to issue an order for stay of execution of the decree and warrant of attachment dated 13 February 2025;
 5. An order for a stay of proceedings in this suit be issued pending the completion of the administration process in respect of the applicant, Comarco Supply Base (EPZ) Ltd.
 6. The costs of this application be borne by the claimant.
2. The application is supported by the affidavit of Kamal Anantroy Bhatt, one of the company's administrators. He avers that the respondent, as the judgment debtor, is under administration from 21 November 2024 by I & M Bank Ltd in Milimani HCCOMMIP No. E080 of 2024 for being unable to pay off its debts, and in compliance with sections 534 and 537 of the Insolvency Act, by the debenture holder. Kamal Anantroy Bhatt and Dhir Kaaaamal Bhatt, holders of Insolvency Practitioners licence



- No. OR-IP-031 and OR/IP/036, respectively, were appointed as the Administrator of the company/respondent.
3. During the pendency of the insolvency process, continuing the proceedings herein is inconsistent with section 560 of the *Insolvency Act* because when the company is under administration, no person may commence or continue legal proceedings, including execution against the company's property. Legal proceedings and execution can only proceed with the consent of the administrator or the leave of the court.
 4. The administrator took possession of the respondent company on 21 November 2024. These proceedings stand suspended by operation of the law, as held in *Shee Hamisi Mashipa v Mare Nostrum Limited* [2021] eKLR. The execution proceedings commenced by the claimant are hence unlawful. The properties proclaimed by the auctioneers on 14 February 2025 are tools and implements of trade, which are not liable for attachment under Section 44 of the *Civil Procedure Act*.
 5. The execution against the respondent, who is under administration, is illegal and in disregard of sections 560 and 522 of the *Insolvency Act*. The Warrants for Sale of movable property dated 13 February 2025 and the proclamation of attachment are unlawful.
 6. The orders sought a stay of execution should be issued to allow the administrators to address the insolvency proceedings before the High Court. Where execution is allowed to proceed in this matter, it shall negate the insolvency proceedings brought to the claimant's attention through the letter dated December 2024.
 7. The matter was marked as settled by consent dated 12 September 2024, adopted by the court on 30 September 2024. The matter was placed for 31 October 2024 to confirm full settlement. This was not done, and a further mention date was allocated for 9 December 2024. On the due date, the respondent filed the instant application.
 8. It appears the delays in confirming the full settlement of the consent judgment were geared towards completing the process of the administrators taking over the respondent company and filing a matter in Insolvency Cause E080 of 2024 before the High Court. On his part, the claimant commenced execution proceedings based on the consent judgment.
 9. The administrators were appointed through a notice dated 21 November 2024.
 10. The insolvency proceedings commenced as the respondent was engaged in these proceedings and settled the matter by consent on 12 September 2024.
 11. Are these proceedings seeking a stay of execution filed in good faith?
 12. The respondent has invoked the provisions of Sections 560 and 561 of the *Insolvency Act*;
Section 560 (1) (d) of the *Insolvency Act* 2015 provides;
 - d) While a company is under administration, a person may begin or continue legal proceedings (including execution and distress) against the company or the company's property only with the administrator's consent or with the court's approval.
 13. Section 561, on the other hand, requires protecting the company's property under administration from wastage while entrenching the position of the administrator to achieve the object of administration. In this regard, the paramount one is the protection of the company's assets.



14. Therefore, the appointment of an administrator and an application seeking an injunction or stay of execution and any alienation of the company's Assets without the administrator's consent or the court's leave is imperative.
15. The purpose of the instant application is to stop an intended sale of an asset of the company, an immovable property, in a manner viewed as contrary to section 561 of the *Insolvency Act*. Such an action cannot interfere with the administrator's functions, but is a bolster to such functions. The rationale is that a person acting for the observance of the law cannot be castigated and should be commended. To allow execution to proceed on the given facts would remove key functions of the administrative process now secured under the insolvency proceedings now brought to the attention of the claimant.
16. Ultimately, the application dated 20 February is meritorious and is hereby allowed; proceedings herein and subsequent orders are stayed pending the insolvency proceedings under Milimani HCCOMMIP No. E080 of 2024. Save, these proceedings should not be at the expense of the claimant, who holds a valid judgment by consent. Costs are awarded to the claimant. The matter shall be mentioned regularly to follow up on the progress. Mention on 31 July 2025.

DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF APRIL 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

