



**Kenya Engineering Workers Union (In Receivership) & 173 others v Athi River Steel Plant (In Receivership) & another (Cause 661 of 2019) [2025] KEELRC 2162 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2162 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 661 OF 2019**

**JW KELI, J  
JULY 18, 2025**

**BETWEEN**

**KENYA ENGINEERING WORKERS UNION (IN RECEIVERSHIP) & 173  
OTHERS & 173 OTHERS & 173 OTHERS ..... CLAIMANT**

**AND**

**ATHI RIVER STEEL PLANT (IN RECEIVERSHIP) ..... 1<sup>ST</sup> RESPONDENT  
TACT CONSULTANCY SERVICES (RECEIVERSHIP) ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant was the respondent in the suit. In response to the suit the respondents filed a memorandum of reply dated 11<sup>th</sup> February 2025 together with a notice of preliminary objection of even date challenging the competence of the suit on the grounds that :-
  - a. The leave of the court to institute these proceedings against the 1<sup>st</sup> respondent, which is a company in receivership has neither been sought nor obtained.
  - b. On this basis the claimant's suit is fatally defective and should be struck out in limine.
2. The court directed that the notice of preliminary objection be canvassed first by way of written submissions. All parties complied.

**Determination**

3. The court finds that it was not in dispute that the company (1<sup>st</sup> Respondent) was under receivership. The 2<sup>nd</sup> Respondent was the receiver. The issue before the court to determine in the Notice of preliminary objection was whether leave of the Court was required to file the suit against the 1<sup>st</sup> Respondent under receivership.



## **Applicant's submissions**

4. Following the delivery of the Ruling on 22nd January 2025, the Respondents' filed a Notice of Preliminary Objection dated 11th February 2025 challenging the competence of the entire suit on the grounds that leave was not sought before the suit was instituted against the 1st Respondent which is an insolvent employer.
5. Pursuant to section 67(b) of the [Employment Act](#), Chapter 226 of the Laws of Kenya an employer is insolvent when a "...receiver or a manager of the company's undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge."
6. It is now well settled in law that any judicial process against an insolvent employer must follow the dictates of the law. In the event, no cause of action can lie against an insolvent employer without leave being obtained by the Claimants. This was the Court's pronouncement in *Grace Wanjiku Mburu & 5 others Suing on their own behalf and on behalf of 89 others v Kenatco Taxis Limited* [2014] eKLR where it stated thus -

“...the procedure to be followed in seeking redress against an employer that has gone under receivership or bankruptcy is set out. It is clear that any judicial process against an insolvent employer must follow the dictates of the law...there are elaborate steps to be taken for the commencement of a suit against a company under receivership. The Court has considered the plethora of authorities and legal writings on the issue of insolvency. I cannot depart from the law. There is no cause of action that can lie against a company under receivership without leave being obtained by the Claimants, Indeed their claim is one to which Part VIII of the [Employment Act](#) 2007 applied. I uphold the preliminary objection raised and dismiss the entire suit against the Respondent. I will award the Respondent the costs as well as they ought not have been sued without leave of Court.”
7. In the English case of *Exchequer v Heydon* (1584) EWHC, 76 ER 63, which was cited by your Ladyship in *Otieno v Mumias Sugar Company Ltd (Under Receivership) (Cause 90 of 2021)* [2022] KEELRC 12866 (KLR) (6 October 2022) (Ruling) it was stated that the office of all Judges is to always make such construction as shall surpass the mischief and advance the remedy. The mischief in this regard is the harassment of an insolvent employer and having its assets dissipated by unnecessary litigation or enforcement of any rights against it.
8. It was stated in Nairobi High Court Civil Suit No E004 of 2022 *Lambert Lwanga Ogochi & other -v- Ponangipalli Venkata Ramana Rao & Others* which was cited with approval in *Otieno v Mumias Sugar Company Ltd (Under Receivership)* (supra) that the core objective of the [Insolvency Act](#), Chapter 53 of the Laws of Kenya, is to avoid the aforesaid mischief. The Court emphasised that "... leave of the court therefore is a prerequisite safeguard. The court has to investigate any intended proceedings before they can be commenced or proceeded with."
9. Similarly, the Court in *Midland Energy Limited v George Muiruri T/A Leakeys Auctioneers & Another* [2019] EKLRC emphasised that an insolvent company ought to be insulated from aggressive creditors looking to subject it to endless legal proceedings.

## **1<sup>st</sup> Claimant's submissions**

10. It is the 1<sup>st</sup> Claimant's submission that the Respondents' Preliminary Objection is fundamentally flawed as the 1<sup>st</sup> Respondent is under receivership and not liquidation as erroneously presumed by the



Respondents. Hence there was no need to seek leave in this instance. Of importance to note, is that, an institution that has fallen into troubled times financially and/or has flouted regulations among other things, goes through the process of being put under receivership first in a bid to revive it to a company that can meet its financial obligations. It is only when the company cannot be salvaged, that a liquidator will be appointed for purposes of winding up the company.

11. That Receivership and liquidation are two distinct legal processes used when a company is in financial distress. Receivership occurs when a secured creditor, such as a bank, appoints a receiver to take control of specific assets or the company's operations in order to recover outstanding debts. In this case, the company remains a legal entity and may continue operating, with the primary goal being debt recovery or business stabilization. Hence the role of the 2nd Respondent (Tact Consultancy Services) in these proceedings. On the other hand, liquidation is the process of winding up a company's affairs entirely. Its assets are sold, creditors are paid in order of priority, and the company is ultimately dissolved. Insofar as liquidation is concerned, section 432 (3) of the *Insolvency Act* stipulates 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.'" Therefore, in light of the above provision and being that the Respondent is merely under receivership and not liquidation, there was no need for leave to be sought before instituting this claim. To buttress the foregoing submission the 1<sup>st</sup> claimant relied on the case of Kienzeko Limited -vs Kenatco Taxis Limited (In receivership) 2005 KEHC 614 (KLR) where the Court found that: -'A Company in receivership still has its corporate status intact. There are many cases where a third party can sue a company in Receivership to establish liability against the company. The position is not analogous to a company being wound up where under Sec. 228 of the *Companies Act* no proceedings shall be proceeded with or commenced against the company except by leave of the court.'" In *Queensway Trustees Ltd vs. Official Receiver and 20. In the case Queensway Liquidator of Tanneries of Kenya Ltd [1983] KLR 51: [1976-1985] EA 498 Kneller, J (as he then was) expressed held as follows:Where a receiver is appointed...the management and control of the company's assets are taken out of the hands of the directors (and the secretary of the company) though the corporate structure remains and the main officers in the company have their usual statutory duties to discharge e.g. the board could convene a general meeting of the company to put it into voluntary liquidation. It can deal with its assets that are not covered by the security under which the receiver is appointed, and any event, property held by the company in trust for third parties, because it would not be caught by the terms of the security."* Additionally, In the case of *Republic v Kenya Revenue Authority Ex-parte KSC International Limited (In Receivership) [2016] eKLR* the Court held with finality that: - "The mere fact that the words "in receivership" are added to the name of a company neither changes its status nor makes it a different entity from the Company."
12. The 1<sup>st</sup> claimant concluded that the Respondent herein, Athi River Steel Plant Limited, is a limited liability company currently under receivership, and not liquidation. The appointment of the 2nd Respondent, Tact Consultancy Services, as Receiver/Manager was strictly for purposes of securing the interests of secured creditors and restructuring the company's financial position, not to dissolve it or wind up its affairs.
13. Under the *Insolvency Act*, 2015, receivership refers to the appointment of a receiver or receiver and manager by a secured creditor to take control of specified assets or the business of a company, primarily to recover debts or to manage the business for the benefit of creditors. Crucially, the company under receivership remains a legal entity, capable of suing and being sued in its own name.
14. Further, the Act provides that upon appointment of a receiver, the powers of the directors of the company to deal with the assets subject to the receivership may be restricted, but this does not render



the company defunct or incapable of being sued. In contrast however, the *Insolvency Act* under Section 432, specifies 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. The Legislature's deliberate use of the term liquidation and the exclusion of receivership therein clearly underscores that leave of the Court is not required to sue a company under receivership as is in this case.

15. Accordingly, a purposive interpretation of the *Insolvency Act*, 2015, as mandated under Article 259(1) of *the Constitution* of Kenya, 2010, obliges courts to give effect to the spirit, purport, and objects of the law. The core objective of receivership is business stabilization and creditor protection, not the winding up of the company.

#### **2<sup>nd</sup>-174<sup>th</sup> Claimant's submissions**

16. These claimant's took the same position as the 1<sup>st</sup> claimant. They submitted that Section 432 (2) of the *Insolvency Act* requires 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. Since the 1st Respondent is under receivership and not liquidation, the provisions of this section are not applicable, and the Claimants are not required to seek the Court's approval to proceed with the suit.
17. To buttress their position they relied on the decision in *Thomas & Piron Grands Lacs Limited v Lighthouse Property Company Limited; Chasebank Kenya Limited (In Receivership) & another (Interest Parties) [2019] eKLR Civil Suit 300 of 2016*, where the Court held that, "It is apparent to me that the preliminary objection was conceived and prosecuted on the understanding that the said defendant has been placed under liquidation. Were that to be the case it would be an open and shut case to invoke the provisions of section 56(2) and the decisions in *Bisai & Another Vs Kenya Commercial Bank Limited & Others [2002] 2 EA 346*, *Kwanza Estaes Limited VS Dubai Bank Of Kenya Limited[2015]eKLR* and *Ruth Wanjiku Kagiri Vs Reliance Bank Limited [2012] EKLR*. For this matter, the second defendant being merely under receivership, those decisions were all cited out of context as much as the same concerned liquidation positions and not receivership... Perhaps I need to add that proceedings against an institution under receivership can be commenced or continued without the necessity of court sanction..." Consequently, the Claimants' suit is properly instituted, and the Respondents' objection lacks merit.
18. Further, in the case of *Coast Hauliers Limited v Imperial Bank Limited (In Receivership) [2021] KEHC 4962 (KLR)* the court held that "A plain reading of the provisions applicable to a banking institution that is under receivership show that they are distinct from those applicable to an institution in liquidation and that leave of the court is not a prerequisite to the filing of a suit against a company under receivership."

#### **Decision**

19. As stated above, it was not in dispute that the 1<sup>st</sup> respondent was under receivership. The applicant in submissions relied on the provision of section 67(b) of the *Employment Act* which states-<sup>67</sup>.  
Definition of insolvency

An employer is insolvent for the purposes of this Part—

- (a) if the employer is a person who—



- (i) has been adjudged bankrupt or has made a composition or arrangement with his creditors; or (ii) has died and his estate is to be administered in accordance with the Law of Succession Act;
  - (b) if the employer is a company—
    - (i) a winding up order or an administration order has been made, or a resolution for voluntary winding up has been passed, with respect to the company; or
    - (ii) a receiver or a manager of the company's undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.”
20. The court finds that section 67 of the Employment Act, relied on by the Respondent/applicant, concerns proceedings before the Cabinet Secretary and not the court under section 66 of the Employment Act to wit:- ‘66. Insolvency of employer

Where on an application made to him in writing by an employee or his representative the Cabinet Secretary is satisfied that—

- (a) the employer of an employee has become insolvent;
  - (b) the employment of the employee has been terminated; and
  - (c) on the appropriate date the employee was entitled to be paid the whole or part of any debt to which this Part applies, the Cabinet Secretary shall, subject to section 69, pay the employee out of the National Social Security Fund, the amount to which, in the opinion of the Cabinet Secretary, the employee is entitled in respect of the debt.’(emphasis given). The Court was of the considered opinion that the Employment Act does not require leave of the court for proceedings under section 66 as it is not the relevant law as concerns the capacity of the company to be sued. The relevant law is the Insolvency Act section 432(2) which states- ‘2)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.’” The court agreed with the claimants that the status of the 1<sup>st</sup> respondent was only receivership. The leave is to be sought when the company is under liquidation which is not the case here. The court upheld the decisions relied on by the claimants above to effect that a company under receivership had capacity to be sued and the leave of the court was not required.
21. In the upshot, the Notice of Preliminary Objection dated 11<sup>th</sup> February 2025 is dismissed with costs to the claimants.

22. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> JULY DAY OF 2025.**

**J.W. KELI,  
JUDGE.**

In the Presence of:



Court Assistant: Otieno

Respondent/ applicant – Ms. Stacie Manani h/b Chacha Odera

1<sup>st</sup> Claimant – Mariam Sitna

2<sup>nd</sup>-173 claimants -Ms. Nekoye

