



**Asuma v ARM Cement Limited [Under Administration (Cause 2295 of 2014) [2023] KEELRC 550 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 550 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2295 OF 2014  
J RIKA, J  
FEBRUARY 28, 2023**

**BETWEEN**

**PATRICK ASUMA ..... CLAIMANT**

**AND**

**ARM CEMENT LIMITED [UNDER ADMINISTRATION ..... RESPONDENT**

**RULING**

1. The claimant obtained judgment from the court dated January 31, 2019, for equivalent of 3 months' salary in compensation for unfair termination at kshs 36,000; and notice, equivalent of 1-month salary at kshs 12,000- total kshs 48,000.
2. He was awarded costs and interest.
3. The respondent has filed an application under Certificate of Urgency, dated May 25, 2021, praying for orders that: -
  - a. The application is certified urgent.
  - b. Stay of execution of the judgment/ decree and all consequential processes is granted, pending hearing and determination of the application.
  - c. Stay of execution of the judgment / decree and all consequential processes pending compliance by the claimant with section 560 of the Insolvency Act.
  - d. The proceedings from August 17, 2018 are declared a nullity.
  - e. Costs be provided for.
4. The application is based on the affidavit of George Weru, one of the joint administrators of the respondent, sworn on May 25, 2021.



5. He explains that the respondent was placed under administration on August 17, 2018. He states that the administration of the respondent, is a matter of public notoriety. The claimant was aware about the administration, as court processes were served on the administrators.
6. The claim was heard on October 18, 2018, and judgment delivered on January 31, 2019. The claimant obtained decree in July 2019. All this time, the respondent was under administration. The *Insolvency Act* requires that a person who wishes to commence or continue proceedings against a company under administration, must obtain the leave of the court or the consent of the administrator. The claimant did not.
7. The claimant relies on his affidavit sworn on June 29, 2021. He admits he obtained judgment on January 31, 2019. He obtained warrants through Jumbo Auctioneers on April 30, 2021. The respondent was placed under administration, on August 17, 2018. The Gazette Notice on administration, was made on October 19, 2018, a day after the hearing on October 18, 2018. There was no need to obtain leave to proceed with the matter. Hearing and all other proceedings took place, before the respondent was placed under receivership. Section 560 of the *Insolvency Act* does not state that proceedings are set aside; it only states that there shall be no execution.
8. Parties agreed to canvass the application through written submissions. The respondent confirmed to have filed and served its submissions at the last appearance in court, on December 16, 2022. The claimant did not attend court on this date, and did not confirm filing his submissions. None have been traced by the court to be on record.

**The court finds:**

9. The application filed by the respondent is meritorious.
10. It is not true as submitted by the claimant, at paragraph 9 of his affidavit, that hearing and all proceedings, including entry of the judgment, took place before the respondent was placed under administration.
11. The Notice of Appointment of administrator at the Insolvency Cause before the High Court Commercial and Admiralty Division, Nairobi, became effective on August 17, 2018.
12. While the claimant may not have known that the respondent had been placed under administration, when he gave evidence before the court on October 18, 2018, there is evidence that he was aware about the administration when he initiated execution proceedings.
13. His Notice of Taxation dated April 15, 2019 was served upon the respondent, and is indicated to have been received by the respondent on May 21, 2019. The receiving stamp in the name of the respondent, clearly indicates “Under Administration.” The Notice of Entry of Judgment of April 15, 2019 is similarly stamped with the indication ‘Under Administration.’
14. The proceedings leading to the judgment and the execution proceedings therefore, appear have taken place, without regard to section 560 of the *Insolvency Act*. The claimant did not have the leave of the court or the consent of the administrator to proceed with the claim.

**It is ordered:**

- a. Proceedings from August 17, 2017, with all consequential orders and judgment on record, are set aside.
- b. The claimant shall seek the requisite leave of the court, or consent of the administrator, to enable him prosecute the claim.



c. Costs in the cause.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,  
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 28<sup>TH</sup>  
DAY OF FEBRUARY 2023.**

**JAMES RIKA**

**JUDGE**

