



**Katatsa v Mumias Sugar Company Limited (Cause 608 of 2015)
[2022] KEELRC 1188 (KLR) (6 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1188 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 608 OF 2015
MA ONYANGO, J
JULY 6, 2022**

BETWEEN

EVERLINE NEKESA KATATSA CLAIMANT

AND

MUMIAS SUGAR COMPANY LIMITED RESPONDENT

RULING

1. Vide a notice of motion dated September 17, 2021, the Claimant seeks the following orders –
 - (i) Leave be granted to the claimant/applicant herein to continue with these proceedings against Mumias Sugar Company Limited, the respondent herein, which has been placed under receivership.
 - (ii) Costs of this application be provided for.
2. The grounds in support of the application are:
 - (a) That the claimant/applicant herein filed this suit on April 15, 2015
 - (b) That the respondent herein was placed under receivership in 2019.
 - (c) That despite the parties having complied with Order 11, the matter has not proceeded to hearing for lack of instructions from the respondent since it was placed under receivership.
 - (d) That the law requires the claimant/applicant to seek leave of this Honourable court to continue with the proceedings against the Respondent which is under receivership.
 - (e) That it is in the interest of justice that the Orders sought be granted.
3. The application is further supported by the affidavit of the Claimant in which she reiterates the grounds on the face of the application.



4. In reaction to the application, the Respondent filed a notice of preliminary objection dated November 10, 2021 on the following grounds: -
 - a. The Employment & Labour Relations Court herein has no jurisdiction under the *Insolvency Act* to grant leave for the continuation of this proceedings against the respondent.
 - b. The court in the *Insolvency Act* means the High Court and which this Court is not.
 - c. The Notice of Motion dated September 17, 2021 is therefore fatally incompetent and for dismissal in limine.
5. Directions were issued on December 9, 2021 that both the application and a preliminary objection be disposed of by way of written submissions and a mention date set on February 15, 2022 to take ruling date. On that date, Mr. Mugo, Counsel for Claimant/Applicant informed the Court that he had not managed to file his submissions and sought more time. He was granted seven (7) days to file and ruling date set for May 20, 2022.
6. To date the claimant has not filed its submissions.
7. In the submissions filed on behalf of the respondent, Counsel submits that this court has no jurisdiction to grant the orders sought in the claimant's application. That section 2(1) of the *Insolvency Act* defines the court as the High Court or the insolvency division of the High Court where such a division is in place. That the right court to grant such orders is the Commercial and Tax Division of the High Court at Nairobi where insolvency proceedings in respect of the Respondent are pending.
8. The respondent relies on the decision of this court in *Fredrick Okoth Owino v T.S.S. Grain Millers* [2017] eKLR and *Nakumatt Holdings Limited & another v Ideal Locations Limited* [2019] eKLR where the courts held that the court for insolvency matters as defined in section 2 of the Act is the High Court.
9. The respondent further relied on the decision in *Shee Hamisi Mashipa v Mare Nostrum Limited* [2021] eKLR where this court citing the decisions in *Fredrick Okoth Owino v T.S.S. Grain Millers* (*supra*) and *Nakumatt Holdings Limited & another v Ideal Locations Limited* (*supra*) declined an application similar to the one filed by the claimant herein.
10. Counsel submitted that without jurisdiction, this court has no powers to grant the orders sought, citing the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR and the Supreme Court decision in Samuel Kamau *Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR.
11. I entirely agree with the respondent. Court is defined in section 2(1) of the *Insolvency Act* as follows –

“The court” means the High Court, and if there is an insolvency division of that court, means that division;
12. Further, section 560(1) of *Insolvency Act* provides for consent to file or continue with suits against companies under insolvency as follows:

560. Moratorium on other legal process while administration order has effect

 - (1) While a company is under administration—
 - (a) a person may take steps to enforce a security over the company's property only with the consent of the administrator or with the approval of the court;



- (b) a person may take steps to repossess goods in the company's possession under a credit purchase transaction only with the consent of the administrator or with the approval of the court; if the court gives approval—subject to such conditions as the court may impose;
 - (c) a landlord may exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company only with the consent of the administrator or with the approval of the court; and
 - (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. As was stated by the court in the case of *Frederick Okoth Owino (supra)*, the *Insolvency Act* was passed after this court's Act was enacted. If Parliament intended to give this court jurisdiction to grant leave in cases filed in this court in respect of companies under insolvency, nothing would have prevented it from doing so.
14. Section 12 of the *Employment and Labour Relations Court Act* provides that this court exercises jurisdiction in “all disputes referred to it in accordance with article 162(2) of the *Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations...”
15. In the case of *Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 others* [2012] eKLR, the Supreme Court stated that:
- “A court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.... Where the *Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”
16. For the foregoing reasons, the respondent's preliminary objection which i treated as its grounds of opposition to the claimant's application succeeds. The claimant's application dated September 17, 2021 is accordingly dismissed.
17. There shall be no orders for costs of the application or the preliminary objection.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 6TH DAY OF JULY 2022

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the



right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE

