



**Njoroge v Hasham Lalji Properties Limited & another (Environment & Land
Case E039 of 2024) [2025] KEELC 218 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 218 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E039 OF 2024**

**EO OBAGA, J
JANUARY 30, 2025**

BETWEEN

SAMUEL NGUGI NJOROGE PLAINTIFF

AND

HASHAM LALJI PROPERTIES LIMITED 1ST DEFENDANT

SEDCO CONSULTANTS LIMITED 2ND DEFENDANT

RULING

1. This is a ruling in respect of a Preliminary Objection dated 18th June, 2024 by the 1st and 2nd Defendants. On 23rd June, 2024 this court directed that the Preliminary Objection be disposed of by way of written submissions. The Defendant filed their submissions dated 2nd December, 2024. The Plaintiff filed his submissions dated 9th September, 2023.
2. The Defendants contend that this court lacks jurisdiction to handle this case as the Plaintiff did not seek leave from the High Court or Receiver Manager before instituting the suit contrary to the provisions of Section 560(1) (d) of the *Insolvency Act* Cap 53.
3. The Defendant submitted that a Receiver Manager is for all intents and purposes an Administrator hence the *Insolvency Act* is applicable. They submitted that even though the High Court had appointed KVSK Sastry of PJS Advisory services as the Receiver Manager of the 1st Defendant, he qualifies to be appointed as an Administrator through “a purposeful interpretation”.
4. The Defendant relied on the case of *In Re Arvind Engineering Limited* (2019) eKLR where Justice Tuiyott (as he then was) stated as follows:

“16. To be emphasised is the role of a Receiver and Manager in Superintending and managing the company as a going concern not only in the best interest of the debenture holder but also the company. This is also one of the



central objectives of Administration (see Section 522 and paragraph 13 of this decision). There lies some commonality between the past concept of Receiver-manager and the contemporary concept of Administration. So as not to disadvantage debenture holders who hold debentures that predate the Act, there is need to give a purposeful interpretation to the provisions of Section 534 (2)(b). This court does hold that as the debenture instruments held by the Bank empowered the bank to appoint a Receiver-manager whose many powers and functions are akin to that of an administrator then the Bank is deemed to have power to appoint an Administrator. In that way the Bank is a holder of a qualifying floating charge”.

5. The Defendants further submitted that Sections 103 and 351 of the Repealed *Companies Act* mirrors Section 354 and 537 of the *Insolvency Act* as regards appointment of Receiver-manager and Administrator respectively. They therefore submitted that this suit ought not to have been brought against the Defendant. They cited Section 560 (1) (d) of the *Insolvency Act*, 2015 which provides as follows;

“Whether the value of the secured creditor’s claim exceeds the value of the encumbered asset”.

6. The Defendants relied on the case of Kenya Commercial Bank Limited -Vs- Charter House Bank Limited (2007) eKLR. In this case a company was under statutory management pursuant to Section 34 (1) (d) and (2) (a) of the *Banking Act*, Cap 488. It was the view of Justice Waweru that the appointment of a statutory manager under the said Section had similar effect to appointment of a Receiver-manager or an Administrator under the *Insolvency Act*.
7. The Plaintiff submitted that Section 56 (1) of the *Insolvency Act* relates to bankruptcy issues pertaining to natural persons and not corporate persons. Section 56 (1) of the *Insolvency Act* provides as follows:
 - (1) A creditor may not begin or continue an execution process in respect of the bankrupt's property or person for the recovery of a debt provable in the bankruptcy, after the Official Receiver—
 - a. has published an advertisement notifying the bankruptcy; or
 - b. has given notice of the bankruptcy to the creditor.
8. The Plaintiff further submitted that the concept of receivership existed under the *Companies Act* Cap 486 which was repealed. The new Companies Act of 2015 did not retain the concept of receivership. He further submitted that even under the repealed *Companies Act*, leave was not mandatory unless the company proceeded to liquidation stage.
9. The Plaintiff relied on the case of Coast Hauliers Limited -Vs- Imperial Bank Limited (In Receivership) 2021 eKLR where it was held as follows:

“This court therefore holds that the Defendant’s counsel misapprehended the application of the the provisions of Section 56 (2) of the said *Kenya Deposit Insurance Act* on the Plaintiff which is under receivership and not liquidation. The decision relied on by the Defendant’s counsel are in the said circumstances not applicable in the present instance or to the applicability of the provisions of 56 (2) of the *Kenya Deposit Insurance Act* to an institution which is under receivership. My understanding of the provisions of Section 56 (2) of the said Act is that the sanction of the court is required when a litigant institutes a



suit or wishes to continue with a suit against an institution which has been placed under liquidation, in as far as its assets are concerned”.

10. The Plaintiff also relied on the case of Official Receiver and Provisional liquidator Nyayo Bus Service Corporation -Vs- Firestone E.A. (1969) Limited (1998) eKLR where the Court of Appeal observed as follows:

“.....The Respondent then requested for entry of judgment against the corporation by its advocates. That request for judgment was dated 10th January, 1997. The Principal Registrar of the Superior court had made the following entry on the letter for request for judgment: ‘I thought Nyayo Bus Corporation was under Receivership if so, leave to sue needed’. The Principal Registrar was in error. Leave to sue is needed only when a corporation or company is in liquidation.”

11. The Plaintiff further relied on the case of Kianzelo Limited -Vs- Kenatco Taxis Limited (In Receivership)(2005) eKLR in which Justice P. J. Ransley stated as follows:

“In this case the suit is against the company. A company in receivership still has its corporate status intact. There are many cases where a third party can sue a company under Receivership to establish liability against the company. The position is not analogous to a company being wound up under Section 228 of the Companies Act no proceedings shall be proceeded with or commenced against the company except by leave of the court”.

12. Reliance was also placed on the case of Stephen Mulewa -Vs- Air Kenya Aviator Limited (2009) eKLR where Justice Okwengu (as she then was) stated as follows:

“ 14 Moreover, the appointment of the receiver only placed on restriction on dealings with the Respondent’s assets. It did not however bring the life of the Respondent to an end. The Respondent remained a legal entity which could sue and be sued. The trial magistrate appears to have confused the appointment of receivers with the appointment of a liquidator for winding up of the company. That was not the position herein. The Appellant’s suit would only have been affected by the receivership at execution stage assuming the debenture had crystallized on the Respondent’s assets. The trial magistrate’s judgment cannot therefore stand as the trial magistrate failed to address the evidence before her and based the dismissal of the Appellant’s suit on a misapprehension of the law”.

13. I have considered the Preliminary objection raised by the Defendants herein as well as the submissions by the parties. The only issue for determination in this case is whether it was necessary to seek leave of the court or the receiver and manager before commencing these proceedings. The Defendants have argued that a receiver under the repealed Companies Act Cap 486 Laws of Kenya is a kin to an Administrator under the Insolvency Act No. 18 of 2015. This is why the Defendants relied on the cases of In Re Arvind Engineering Limited and the Kenya Commercial Bank Limited (Supra) where the Judges involved were of the view that the functions of a Receiver and manager were akin to an Administrator under the Insolvency Act.

14. It is important to note that one of the decisions that is Kenya Commercial Bank (Supra) was decided in (2007) before the enactment of the Insolvency Act. Under Section 529 of the Insolvency Act, an Administrator cannot be appointed in respect of a banking institution, finance institution or insurance companies.



15. In the instant case, the 1st Defendat is under receivership. Its corporate status is intact. The company can sue and be sued. It is not under liquidation. There was therefore no need for the Paintiff to seek leave of the court to commence these proceedings. The Court of Appeal in the case of Official Receiver and Provisional Liquidator Nyayo Bus Service Corporation (Supra) observed that leave to sue only applied where a company or corporation was under liquidation not receivership. This was also the position in the case of Stephen Mulewa (Supra).
16. A receiver and manager has different roles to play and the two cannot be said to be the same as the Defendants are arguing. This is why under the *Insolvency Act* there can be no progress to liquidation without an Administrator first having been appointed. Under Section 544 of the *Insolvency Act* a company or its directors may not appoint an Adminstrator when an adminisitrative receiver is in office.
17. From the above analysis and the decisions cited by the Plaintiff, it is clear that no leave was required by the Plaintiff to commence these proceedings. I therefore find that the Preliminary Objection is devoid of merit. The same is dismissed with costs to the Plaintiff.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MAKUENI THIS
30TH DAY OF JANUARY, 2025.**

In the presence of:

Mr. Anyona for Mr. Otwal for Defendants.

Court assistant - Steve Musyoki

