



**Gitere Kahuro Investmensts Limited & another v Kenya Planters
Co-operative Union (In Liquidation) (Civil Suit E780 of 2022)
[2025] KEHC 487 (KLR) (Commercial and Tax) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 487 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E780 OF 2022
JWW MONG'ARE, J
JANUARY 27, 2025
IN THE MATTER OF KENYA PLANTERS UNION LIMITED (IN LIQUIDATION)
AND
IN THE MATTER OF THE INSOLVENCY ACT(CHAPTER 53 LAWS OF KENYA)
BETWEEN
GITERE KAHURO INVESTMENSTS LIMITED 1ST APPLICANT
KENYA BOX BODY BUILDERS 2ND APPLICANT
AND
KENYA PLANTERS CO-OPERATIVE UNION (IN
LIQUIDATION) RESPONDENT

RULING

1. On 4th October 2024 this court granted prayers allowing the reinstatement of the Plaintiffs Application dated 1st November 2022 and directed that the same be heard and determined on merit. The said application was filed to obtain the leave of court to commence an action against the Respondent pursuant to section 432(2) of the *Insolvency Act* on account of the Respondent having been under Liquidation.
2. The said application is supported by the grounds set out on its face and the supporting affidavit of David Wakang'u Gitere sworn on 1/11/2022. The Respondents opposed the said application and filed a replying affidavit sworn by Stephen Kamau Njoroge. It is the Applicants case that they are registered as owner of the parcels of land known as L.R. 4872/1 and 4872/2 being the suit property and that they



were on 8th August 2016 served with Notices seeking to sell their respective parcels of land to recover a sum of Kshs. 212,527,533.99/= and that they subsequently moved to the Environment and Land Court in ELC No. 1060 of 2016 to forestall the sale as they stand to suffer irreparable loss if the same proceeded. That despite the ELC court granting initial orders stopping the sale, the said court found subsequently that it lacked jurisdiction to determine the matter and directed the parties to file the suit before this court as the dispute revolved around a charges and mortgages.

3. In moving to this court, the Applicants argue that they are not indebted to the Defendants and that said demand of the loan violates the iduplum rule as and are seeking an opportunity to demonstrate that since the Defendant being under liquidation leave to commence any action against it has to be obtained from the court in accordance with the provisions of Section 432 of the [Insolvency Act](#).
4. The Defendant has opposed this application. The response by the liquidator on 21/12/2022 is to the effect that the liquidation process has since been concluded and upon the submission of the liquidation report to the Commissioner of cooperatives, a new entity was put in place and known as New Kenya Planters Co-operative Union that took over the activities of the defunct Kenya Planters Co-operative Union. It is the position taken by the Respondents that the powers of the liquidator have now been extinguished as the Kenya Planters Cooperative Union as it existed is no longer there. The Liquidator further contends that under Section 19 of the Limitations of Actions Act, the claim sought to be introduced through these proceedings has been extinguished by operation of the law, which allows claims under mortgages and charges to remain alive for a period of 12 years.
5. I have considered carefully the arguments put forward by the parties. I agree with the arguments of the Respondent the applicable law in regard to the present matter is the Cooperative [Societies Act](#) and not the [Insolvency Act](#). The Respondent was a society registered pursuant to the provisions of the [Societies Act](#), Cap 490 laws of Kenya and the liquidation process was carried out in accordance with the said Act. Specifically, the liquidator was appointed pursuant to Sections 65-69 of the said Act. The said provisions of the Act provide:-

“65. Appointment of liquidator

Where the registration of a co-operative society is cancelled under section 61 or 62, the Commissioner may appoint one or more persons to be liquidator or liquidators of that society (hereinafter referred to as the liquidator) and all the property of such society shall vest in the liquidator from the date upon which the order of cancellation takes effect.

66. Powers of liquidator

- (1) The liquidator shall, subject to this Act, have the following powers—
 - (a) to appoint a day, in the prescribed manner, before which the creditors whose claims are not already recorded in the books of the co-operative society shall state their claims for admission, or be excluded from any distribution made before they have proved them;
 - (b) to institute and defend suits and other legal proceedings by, and on behalf of, the society in his own name or office, and to appear before the



Tribunal as litigant in person on behalf of the society;

- (c) to appoint an advocate to assist him in the performance of his duties;
- (d) to refer disputes to the Tribunal in the prescribed manner;
- (e) to determine from time to time the contributions to be made by the members and past members, and by the estates of deceased members of the society, to the funds of the society; CAP. 490 [Rev. 2012] Co-operative Societies [Issue 1] 34
- (f) to investigate all claims against the society, and subject to this Act, to decide questions of priority arising between claimants;
- (g) to call such meeting of members and creditors as may be necessary for the proper conduct of the liquidation;
- (h) to sell the movable and immovable property and rights of action of the society, by public auction or private contract with power to transfer the whole thereof to any person or company or to transfer the same in parcels;
- (i) to carry on the business of the society as far as may be necessary for the proper liquidation of the affairs of the society;
- (j) to determine, from time to time, by what persons and in what proportion the expenses of the liquidation are to be borne;
- (k) to take possession of the books, documents and assets of the society;
- (l) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Commissioner;
- (m) to give such directions in regard to the disposal of the books and documents of the society as may appear to him to be necessary for winding up the affairs of the society;
- (n) to compromise, with the approval of the Commissioner, any claim by, or against, the society;



- (o) to apply to the Commissioner for his discharge from the duties of liquidator after completion of the liquidation proceedings.
 - (2) The liquidator shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and so far as may be necessary, in the same manner as is provided in the case of a court under the *Civil Procedure Act* (Cap. 21), in so far as such powers are necessary for carrying out the purposes of this section.
67. Liquidation account of societies An account, to be called the Co-operative Societies Liquidation Account, shall be kept by the Commissioner with such bank as may be prescribed and shall be administered in the prescribed manner.
68. Powers of Commissioner during liquidation
- (1) The liquidator shall exercise his powers subject to the guidance and control of the Commissioner and to any limitations imposed by the Commissioner, and the Commissioner may—
 - (a) rescind or vary any order made by the liquidator and make any new order he thinks proper;
 - (b) remove the liquidator from office and appoint a new liquidator in his place;
 - (c) call for all books, documents and assets of the society;
 - (d) by order in writing, in any particular case, limit the powers of the liquidator conferred by section 66;
 - (e) at his discretion, require accounts to be rendered to the Commissioner by the liquidator;
 - (f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the society;
 - (g) make an order for the remuneration of the liquidator;
 - (h) grant a discharge to the liquidator on application by him after completion of the liquidation proceedings;
 - (i) require any member or past member of the society and any trustee, banker, receiver, agent or officer of the society to pay, deliver, convey, surrender or transfer forthwith, or within such time as he shall direct, to the liquidator, any money, property, books or papers in his hands to which the society appears to be entitled;



- (j) appoint a special manager for the management of the business of the society and determine his remuneration and what, if any, security he shall give for the proper performance of his duties;
 - (k) refer any dispute between a liquidator and any third party to the Tribunal if that party consents in writing to be bound by the decision of the Tribunal;
 - (l) require the indemnification of the liquidator.
- (2) The decision of the Tribunal on any matter referred to it under subsection (1)(k) shall be binding upon the parties and shall be exercisable in the like manner as an order made by the Commissioner under subsection (1)(a).
 - (3) Where any matter is referred to the Tribunal under subsection (1)(k) the cost of the reference and award shall be in the discretion of the Tribunal, who may direct to and by whom, and in what manner, those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid by any party thereof.
69. Appeal against order of liquidator or Commissioner
- (1) A person aggrieved by any order or decision of the Commissioner or the liquidator under section 66 or section 68, as the case may be, may appeal against the order or decision to the Tribunal within thirty days of the order or decision.
 - (2) A person aggrieved by a decision of the Tribunal under subsection (1) may appeal to the High Court within thirty days of the decision.”

6. The present application having been filed under the *Insolvency Act* is therefore misconceived. In addition, the court notes that the Liquidation process was completed and therefore the entity known as Kenya Planters Cooperative Union was wound up and, in its place, a new entity was created which is known as New Kenya Planters Cooperative Union. The present being one seeking leave to institute proceedings against the Kenya Planters Cooperative Union is therefore misdirected to a party that has ceased to exist in law. The court is therefore satisfied that the application as filed has been wrongly filed and therefore is unsustainable and is hereby dismissed forthwith. Each party shall bear their own costs of the application. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JANUARY 2025

J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Mr. Mbirwe holding brief for AGN Kamau for the Applicants.

Mr. Muriuki for the Respondent.



