



**Mwangi & Kihang'a Advocates v Xplico Insurance Company Limited (Insolvency Cause E030 of 2023) [2025] KEHC 468 (KLR) (Commercial and Tax) (24 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 468 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E030 OF 2023  
BM MUSYOKI, J  
JANUARY 24, 2025**

**BETWEEN**

**MWANGI & KIHANG'A ADVOCATES ..... APPLICANT**

**AND**

**XPLICO INSURANCE COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. This is a petition seeking to have the debtor/respondent liquidated for inability to pay its debts. The amended petition dated 6<sup>th</sup> October 2022 is opposed through a replying affidavit sworn by Mohamed Haid on 23-01-2023. This matter was slated for judgment today but for the following reasons, I was unable to write the judgment. Instead, I will deliver a ruling.
2. As I was researching for the judgment, it came to my knowledge that there is a possibility that the respondent was placed under statutory management on 8-12-2023 or thereabout by the insurance industry regulator (Insurance Regulatory Authority) and Policy Holder Compensation Fund appointed as the statutory manager. The effect of this under section 67C (2) and (5) of the *Insurance Act* gives powers to the appointed statutory manager the similar to the powers of the receiver who would be appointed in the event this petition is allowed. That would pose a dangerous precedent of competing interests and obviously achieve undesired results. This is a court of law which should not allow confusions and conflicts in matters of public interested especially where the potential of such conflicts and confusions is foreseeable. Liquidation of an insurance company must go through a process in tandem with law specifically both the *Insolvency Act* and the *Insurance Act*. Once an insurance company is placed under statutory management, the locus standi to apply for liquidation in the event that is the only viable option is placed on the Commissioner of Insurance under Section 123 of the *Insurance Act*. The Commissioner would do so through the process provided for in Part VI of the *Insolvency Act* Chapter 53 of the Laws of Kenya. In my view, where the Commissioner of Insurance has



exercised its powers under Section 67C of the Insurance Act, all other proceedings including insolvency causes must be suspended.

3. The second reason which led me to decide against considering the petition on its merits is that the application herein has not been served on the Commissioner of Insurance. Section 121(1) of the Insurance Act provides that;

- “(1) If an application for the liquidation of an insurer is presented by a person other than the Commissioner, the applicant shall serve a copy of the application on the Commissioner.
- (2) On being served with a copy such an application, the Commissioner becomes a party to the proceedings and is entitled to be heard at the hearing of the application.’

There is no evidence in this matter that the Commissioner of Insurance has been served. The rationale for this provision I believe, was to avoid a situation like the one we have now. If the Commissioner had been served with this application, he would have shed light on the position and status of the appointment of the statutory manager. Until the Commissioner is served with this application, the cause should not proceed for hearing.

4. The last reason for suspending judgment herein is that, I have noticed that there are other petitions pending before this court seeking to liquate the respondent. For instance, there is petition number E051 of 2022 which is coming for mention before the Deputy Registrar on 10-03-2025. It will be an abuse of the court process and a recipe of embarrassment to have similar causes seeking the same orders against the same debtor proceed before different judges of the same jurisdiction.
5. In view of the above, I hereby make the following orders;
  - a. The hearing of this cause is halted until such time as the status and position of the statutory management in respect of the debtor shall be ascertained and report to that effect filed.
  - b. This matter shall be mentioned before the Deputy Registrar on 10-03-2025 together with insolvency petition number E051 of 2022 for further directions.
  - c. The Deputy Registrar of this court shall ascertain the number of similar petitions involving the respondent pending before this court and place all of them before the presiding judge of this division for further directions.
  - d. This ruling and mention notice for 10-03-2025 shall be served upon the commissioner of insurance by the Deputy Registrar and an affidavit of service to that effect filed.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JANUARY 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Mr. Kihanga for the applicant/creditor and in absence of the respondent.

