



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lutta v Mumias Sugar Company (Under Administration) (Miscellaneous Application E158 of 2023) [2025] KEHC 5425 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5425 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS APPLICATION E158 OF 2023  
SC CHIRCHIR, J  
APRIL 29, 2025**

**BETWEEN**

**BENJAMIN JUMA LUTTA ..... APPLICANT**

**AND**

**MUMIAS SUGAR COMPANY (UNDER ADMINISTRATION) ... RESPONDENT**

**RULING**

1. The Applicant has brought these proceedings against the respondent Mumias Sugar Company Limited ( under Administration ) seeking leave of court to continue prosecuting *Mumias SPMCC No.221 of 2016*. He also makes similar prayers in respect to other suits namely: *SPMCC No. 223 of 2016*, *SPMCC No. 227 of 2016*, *SPMCC No.228 of 2016* and *SPMCC No. 229 of 2016*.
2. The Affidavit in support is sworn by his Advocate, one Lugulu Modestar .The applicant states that he sued the respondent herein vide *SPMCC No. 221 of 2016* on 20<sup>th</sup> September, 2016 and the respondent had filed its defence . The plaint and the defence are attached to the Affidavit. That the said suit was listed for hearing on several dates but never proceeded owing to the respondent not being ready or prepared for the hearing. Subsequently the respondent was placed under receivership before the above suit was prosecuted.
3. He deposes that he will be greatly prejudiced if the suit is not prosecuted; that he has brought this application without unreasonable delay; and finally, that it is in the interest of justice that the suit be expeditiously.
4. There was no response from the respondent.

**Analysis and determination**

5. I have considered the application, the grounds and supporting affidavit together with the annexures. The key issue for determination is whether this court should grant leave to the applicant who is a



claimant in *Mumias SPMCC No. 221 of 2016* and to continue with the prosecution of the suit , and whether orders should also be granted in respect of the other suits he has stated.

6. The application is brought under Section 1A, 1B and 3A of the [Civil Procedure Act](#), Section 560(1) of the [Insolvency Act](#) and Article 159 (2) (b) of the [Constitution](#).
7. Section 560 (1) and (2) of the [Insolvency Act](#) provides as follows:
  1. While a company is under administration:
    - a. ....
    - b. ....
    - c. ....
    - 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.
  2. In giving approval for a transaction under subsection (1), the court may impose a condition on, or a requirement in connection with the transaction.
8. Section 560A of the [Act](#) sets out the considerations to be taken into account by the court or Administrator of the company on applications for approval to lift the moratorium. These include:
  - a. The statutory purpose of the administration;
  - b. The impact of the approval on the applicant particularly whether the applicant is likely to suffer significant loss;
  - c. The legitimate interests of the applicant particularly and he legitimate interest of the creditors of the company giving the right of priority to the proprietary interest of the applicants;
  - d. Whether the value of the secured creditor’s claim exceeds the value of the encumbered asset;
  - e. Whether the secured creditor is not receiving protection for the diminution in the value of the encumbered asset;
  - f. Whether the provision of protection may be feasible or overly burdensome to the estate;
  - g. Whether the encumbered asset is not needed for the reorganization or sale of the company as a going concern;
  - h. Whether relief is required to protect or preserve the value of assets such as perishable goods; or
  - i. Whether in reorganization, a plan is not approved within six months.
3. An approval granted under subsection (1) shall be for a period of not more than twenty-eight days.
9. While expounding the importance of Administration under the current insolvency law, in [Midland Energy Limited v George Muiruri t/a Leakeys Auctioneers & another](#) [2019] KEHC 9320 (KLR) Justice Tuiyot stated as follows: The design of our current Insolvency Laws is to give a second chance to financially distressed Companies. A break from the past where the fate of an ailing Company would invariably be a Winding up or liquidation order. Administration is one of the alternatives to liquidation .....The objectives of administration are set out in Section 522 of the [Act](#) to be as follows:-



1. The objectives of the administration of a company are the following:
  - a. to maintain the company as a going concern;
  - b. to achieve a better outcome for the company's creditors as a whole than would likely to be the case if the company were liquidated (without first being under administration);
  - c. to realise the property of the company in order to make a distribution to one or more secured or preferential creditors.....So as to achieve that objective, the Company must be insulated from aggressive Creditors who could cause a run of the Company assets. The statute contemplates that upon such protection a Company will not be distracted from precipitate action and so the Administrator will be able to perform his function in the interest of all of the Company's Creditors"
9. Back to the instant case, I first wish to address what I consider to be a procedural defect;- The Applicant has prayed that the same orders he is seeking be applied to case numbers 223, 227,228, and 229 all of the year 2016 and filed at the chief Magistrate's court at Mumias.
10. It is not stated whether all the suits are between the same parties and if the plaintiffs are different, in what capacity is the Applicant seeking for such a prayer. There is no evidence that the other parties if any, has given him the Authority to make those prayers. All that is stated is that the suits are in the same series. The documentary proof as to the existence of these cases, their nature and the estimated value has also not been submitted, as no pleadings in respect of these case have been submitted in evidence.
11. In the circumstances prayer 3 of the Application is disallowed.
12. Turning on to the Applicant's own case which is given as *Mumias CMCC NO. 221 OF 2016*, I find that the application is wanting in essential particulars. Bearing in mind the purpose of Administration as aforesaid the details of the case should have been provided. I have seen a copy of the defence and I can decipher that the suit is a claim for damages for injuries sustained as a result of a road accident. However, the plaint, which would ordinarily contain the particulars of loss has not been availed in evidence. In the circumstances, this court is not in a position to make any projection on the likely award and hence what impact it would have on the respondent as a company under Administration, if he is allowed to prosecute the suit.
13. The Applicant's approach to court is rather half-hearted. He has made pleas without availing the necessary documentary evidence to back up his claims. The Applicant's case is wanting on proof. It is unmerited and it is hereby dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO THIS 29<sup>TH</sup> DAY OF APRIL 2025.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of:

Godwin Luyundi- Court Assistant

