



Great Link Insurance Agency v Resolution Insurance & another (Civil Appeal E243 of 2021) [2024] KEHC 10334 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEHC 10334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E243 OF 2021**

F WANGARI, J

MAY 30, 2024

BETWEEN

GREAT LINK INSURANCE AGENCY APPELLANT

AND

RESOLUTION INSURANCE 1ST RESPONDENT

COMMISSIONER OF INSURANCE 2ND RESPONDENT

RULING

1. This ruling relates to an application dated 2nd May, 2024 which sought for the following orders: -
 - a) That this Honorable Court be pleased to grant the applicant leave to continue with the appeal herein.
 - b) That this Honorable Court be pleased to grant any other order that it may deem fit and just to ensure the ends of justice are met.
 - c) That the costs of this application be in the cause.
2. The application is based on the grounds on the face of the application and the supporting affidavit of Mwanamisi Rama Nondo a principal officer of the Appellant.
3. The application was opposed and the 1st respondent filed Grounds of Opposition dated 6th May, 2024 where the 1st respondent contends that the application is incompetent as it is file before the wrong forum and that leave ought to be sought before the Insolvency Court. That the Court lacks jurisdiction to grant leave under Section 432(2) as it sits in its appellate capacity and the substantive matter herein is an appeal.



4. The 1st respondent contends that the Appellants insolvency proceedings are already before a court of competent jurisdiction and that the instant proceedings only serve to distract the interim liquidator from performing his duties under the *insolvency Act* for the benefit of all creditors.
 5. Directions had been given that the application be dispensed with by way of written submissions. As at the time I recessed to pen down this ruling, only the appellant had filed submissions.
 6. Having considered the application by the Appellant, the supporting affidavit thereto, the grounds of opposition by the 1st respondent and the appellant's submissions, the issues arising for determination is whether the application is merited and who should bear the costs if any.
 7. I shall first address the issue as to whether this court has jurisdiction to entertain this matter. Section 2 of the *Insolvency Act* States as follows in defining "the court" under the Act. "The Court" means the High Court, and if there is an insolvency division of that Court, means that division". The instant matter is before the High Court and therefore a court with competent, original and inherent jurisdiction.
 8. Section 432(2) of the *Insolvency Act* further provides that, "When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate."
 9. The Appellant contends that the Appeal herein was filed on the 17th November, 2021 before the appointment of the liquidator on the 21st December, 2023. That the proceedings before this court were pending at the time of the said appointment and following the court's directions on the 29th January, 2024 the appellant had filed the instant application.
 10. My finding is that the Appellant has demonstrated that it has a merited application. I also note that the suit was initiated before the appointment of the liquidator which means that the liquidation process commenced after the appellant had moved the court for the orders sought in the application.
 11. In *Kuza Farms & Allied Ltd vs Dubai Bank Kenya Ltd (In liquidation)* [2017] eKLR while dealing with a similar application though under the Kenya Deposit Insurance Corporation Act, it was held that: "In my considered opinion, the essence of seeking leave and/or sanction of the court to commence civil proceedings pursuant to section 56(2) of the *Act*, is inter alia to evaluate the merit of the alleged claim to be instituted. As rightfully submitted, the intention is to weed out frivolous cause of actions. The question that arises is: How can the court rule at this stage, that the applicant intended cause of action is frivolous and/or lacks merit. The provisions of Article 48 of the *Constitution* also comes into play, that the state shall ensure "access to justice for all persons".
 12. The delicate balance herein is to weigh the consequences of denying the Appellant an opportunity to be heard, and allowing the same. I am of the view that, if I allow the application, the respondent will not suffer any prejudice, as they will still be heard on the appeal sought to be heard. If I deny the Appellant the opportunity to be heard, then they will be prejudiced, as its appeal may remain unheard.
 13. I find that the applicant has demonstrated that it has a valid reason for grant of the orders sought herein. I find that the Applicant will be greatly prejudiced if the orders sought are not granted.
 14. In the upshot, I find that the application dated 4th May, 2024 has merit and I therefore allow it as prayed. Costs shall abide the outcome of the main appeal
- Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 30TH DAY OF MAY, 2024.



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F. WANGARI

JUDGE

In the presence of;

Mr. Mungai Advocate h/b for Mr. Said Advocate for the Applicant

Mr. Warutumu Advocate h/b for Mr. Waithaka Advocate for 1st Respondent

N/A for 2nd Respondent

