



Tricon Energy UK Limited v General Plastics Limited (Under Administration) (Civil Case 273 of 2018) [2024] KEHC 7707 (KLR) (Commercial and Tax) (27 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7707 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 273 OF 2018
PM MULWA, J
JUNE 27, 2024**

BETWEEN

TRICON ENERGY UK LIMITED PLAINTIFF

AND

GENERAL PLASTICS LIMITED (UNDER ADMINISTRATION) .. DEFENDANT

RULING

1. Vide a Notice of Motion application dated 4th October 2021 the plaintiff prayed for leave to continue with the proceedings herein, including the enforcement of the injunctive orders issued on 13th December 2018, against the defendant who is under administration.
2. The application was filed pursuant to Article 159 (2) (b) of *the Constitution*, Sections 560 (1) (d), 560 A and 561 (4) (F) of the *Insolvency Act* 2015 and Sections 1A, 1B and 3A of the *Civil Procedure Act*.
3. The application was based on the grounds set out on its body and the supporting affidavit of Joseph Njoroge, the plaintiff's advocate with conduct in this matter.
4. Mr. Njoroge averred that the defendant has not placed any material before the court to show that it is under administration and the plaintiff has not been served with any administration documents and that the defendant has defied mandatory provisions of the *Insolvency Act* by failing to update its administration position with the registrar of companies to put the creditors and public on notice upon search.
5. It was averred by the plaintiff that it was apprehensive that it shall suffer great prejudice if the defendant or its agents proceeds to sell and/or dispose of its assets as the present suit would be rendered nugatory if it is successful.



6. The plaintiff case was that this court issued an injunction pending determination of the present suit against the defendant on 13th December 2018 and unless the application is allowed, the plaintiff shall be deprived of the protection of the said injunctive orders and the orders would have been issued in vain.
7. Further that the plaintiff would suffer great injustice and substantial loss if the orders sought herein are not granted as it will be unable to continue prosecuting the present suit and enforce the protection orders issued by the court yet it has a legitimate interest on the defendant's assets.
8. In opposition to the application, the defendant filed a replying affidavit sworn on 19th April 2022 by Ponangipalli Venkata Ramana Rao, its administrator.
9. He averred that the defendant was placed under administration on 14th January 2020 and he was appointed as its administrator; that the initial administration term of twelve months was extended on two occasions, the last extension made on 2nd February 2022 and was published in a local daily newspaper of nationwide circulation.
10. Mr. Rao averred that the fact that the defendant is under administration meant that a moratorium on all court proceedings against the defendant was in place, pending the outcome of the administration and that the instant application seeking leave to continue legal proceedings against the defendant while under administration should be made under an insolvency cause which is a distinct legal process from this matter.
11. Further that the administration of the defendant should only be disrupted where there are clear and special circumstances which the plaintiff has not demonstrated.
12. Mr. Rao prayed to have the instant application dismissed with costs and the proceedings stayed pending the conclusion of administration of the defendant.

Analysis and determination:

13. Both parties canvassed their positions through written submissions; the plaintiff's dated 6th March 2023 and the defendant's dated 18th July 2023. The court has duly analysed and considered the pleadings and the filed submissions.
14. I will begin by determining whether this court is the right venue to entertain the present application,
15. The plaintiff submitted that this court is the appropriate forum to hear and determine the same and that it should be granted leave to proceed with the matter since it has legitimate interest in the assets of the defendant. That it is a creditor owed USD 361,191 plus interest and late payment fees by the defendant.
16. The defendant on the other hand submitted that whereas the High Court has jurisdiction to hear such a matter as this one, the most preferable division in that regard is the Insolvency Division of the High Court.
17. The guiding statutory provision is Section 560 (1) (d) of the *Insolvency Act* which states:
 - “(1) While a company is under administration-
 - (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.”



18. Under Section 2 of the *Insolvency Act*, "the Court" is defined as the "High Court, and if there is an insolvency division of that Court, means that division."
19. In the Court of Appeal case of Nakumatt Holdings Limited & Another v Ideal Locations Limited [2019] eKLR it was held:

"There is good reason, in our view, why Section 2 of that Act specifies the court to grant approval should be the court seized of the insolvency matter, namely the High Court. The administration of an insolvent company is for the benefit of all creditors of such a company and a situation where creditors separately attack or take assets of a company would defeat the overall objective of the administration."
20. There is no doubt as to the intention of the drafters of the *Insolvency Act*. The simple inference is that if there is an insolvency division in the High Court, then only that can grant leave to begin or continue a suit against a company under administration. This is in tandem with the objectives of administration which is to rescue a company from financial distress which may lead to its death.
21. In this case there is an active Insolvency Cause No. E003 of 2021 in the High Court where the subject matter is the administration of the respondent company. It is that court therefore that has the jurisdiction to grant leave under section 560(1) of the *Insolvency Act* for any creditor to continue proceedings against the defendant company. This is to prevent the defendant's creditors from filing multiple cases against the defendant in different fora.
22. It then follows that the Insolvency Court will be well placed and conversant with the finer details as regards the company under administration, and is able to determine whether the intended suit promotes the best interest of the company, or is frivolous and intended to overburden the already struggling company with unnecessary litigation.
23. The purpose and function of that provision is to ensure that a company in liquidation is not subjected to a multiplicity of actions which would be both expensive and time-consuming, and in some cases unnecessary, taking the liquidator's attention and available funds away from the orderly winding up of the company.
24. Having found that this court is not the right venue to entertain the present application, but rather the court handling Insolvency Cause No. E003 of 2021, I am not persuaded to grant the orders sought in the application.
25. As a consequence, the application dated 4th October 2021 is dismissed with costs to the defendant.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

This 27th day of June 2024.

.....

P. MULWA

JUDGE

In the presence of:

Mr. Mungai h/b for Mr. Mahan for Plaintiff/Applicant

Mr. Angwenyi for Defendant/Respondent

Court Assistant: Carlos

