

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS APPLICATION NO. 0175 OF 2023
(ARISING FROM INSOLVENCY PETITION NO. 01 OF 2023)
IN THE MATTER OF THE INSOLVENCY ACT 2011

AND

**IN THE MATTER OF GREAT LAKES COFFEE UGANDA LIMITED (IN PROVISIONAL
ADMINISTRATION)**

AND

**IN THE MATTER OF AN APPLICATION FOR EXTENSION OF THE INTERIM
PROTECTIVE ORDER BY BERNARD MUKASA AND EMILY GAKIZA (PROVISIONAL
ADMINISTRATORS)**

BEFORE: HON. JUSTICE MUSA SSEKAANA

RULING

The Applicant brought this application by way of Notice of Motion under Section 145(3) of the Insolvency Act, regulation, 203 of the Insolvency Regulations, 2013 and Order 52 r 1 of the Civil Procedure Rules, for orders that;

1. The Interim protective Order and the period of Provisional Administration of Great Lakes Coffee Uganda Limited be extended for a period of thirty (30) days.

The grounds in support of this application are set out in the affidavits of Bernard Mukasa and Emily Gakiza the Provisional Administrators which shall be read and relied on at the hearing but briefly they are;

1. Great Lakes Coffee Uganda Limited by a special resolution passed on 7th March 2023 having regard to its financial position agreed to make a settlement with its creditors.
2. The company appointed Emily Gakiza and Bernard Mukasa as Provisional Administrators and they consented to the appointment and gave security for the proper performance of their duties to the satisfaction of the official receiver.
3. That on the 13th day of March this Honourable Court issued an interim protective order in respect of the company for a period of 30 days lapsing on 13th day of April 2023 which was extended after the lodgement of this application to 25th April 2023.
4. That following the successful issuance of notices to all known creditors, the Provisional Administrators held a creditors' meeting 6th April 2023 at Hotel Africana.
5. At the creditors meeting physically and online via zoom confirmed the appointment of the applicants as the Provisional Administrators and noted that the thirty days period granted by the law for Provisional Administration was not sufficient to deal with the issues affecting the company.
6. That the Creditors resolved that the Provisional Administration period be extended by a further thirty days since the time was not sufficient to make a decision on the proposed Business Rescue Plan. It was further noted that there was need to have all the company's books of accounts audited to verify the company's financial position before the administration deed can be endorsed.
7. On April 2023 the Provisional Administrators received a letter from Ligomarc Advocates, counsel for Bank of Africa, one of the creditors

requesting to review the assets register, carry out an inventory and conduct an evaluation of all the company's assets starting on 12th April 2023 at 10:00am.

8. The Provisional Administrators have been involved in engaging with various parties and receiving multiple proposals including one from Lundy Private Credit Platform SPC and Finspire AG, who have expressed interest in investing in the company.
9. It is in the interest of company and creditors that the interim protective order and the period for Provisional Administration be extended for a period of 30 days to enable the company and its creditor agree on the settlement proposal.

This application was opposed by Bank of Africa who filed an affidavit in opposition by the Executive Director of Bank of Africa-Bernard Robinson Magulu briefly as follows;

1. Bank of Africa is a secured creditor of Great Lakes Coffee Uganda Ltd and the debentures and other securities given by the company were primarily issued to secure working capital and stock/export finance facilities made available to the company from time to time for purposes of financing coffee purchased from third parties.
2. That in September 2016, the Bank and the company executed a collateral management agreement with Collateral Management International Proprietary Ltd under which the Collateral Manager was appointed custodian and trustee of all the company's coffee in storage for the benefit of the Bank and whose fees would be paid by the company.
3. That over time, the company defaulted on its loan repayment obligations and as of 25th October 2022 its indebtedness to the bank stood at USD. 4,300,943.

4. That on 9th March 2023, the bank enforced its rights in the debentures and appointed Kabiito Karamagi and Rita Birungi Baguma as Receiver /Managers over the company's assets.
5. That the administration process only serves to undermine the Bank's legitimate rights as secured rights as a secured creditor and that secured creditors will be seriously prejudiced if the application is granted.

In the interest of time the Applicant and Bank of Africa appointed receivers' made filed written submissions which this court has considered. The applicant was represented by *Ms Dorothy Nandugga and Mr Ronald Tusingwire* while *Mr. Kabiito Karamagi* appeared for *Bank of Africa* .

Determination

The applicant's counsel raised some points of law which I have not been able to seriously delve into in the interest of time. The applicant made a case for extension of time contending that the provisional administration was intended aimed at ensuring that the company stabilizes its financial position, continues to carry on business and enters a settlement with its creditors which will enable it meet all its obligations to the creditors.

Counsel argued that a the Provisional Administrators have presented a proposed Business Rescue Plan with details of how the company will be put back on track through finances from the financiers who have come on board. The creditors noted that the period for provisional administration was not sufficient and the majority supported the extension.

The secured creditors counsel vehemently opposed the application for extension of provisional contending that as a secured creditors ought to have been heard and yet the regulations seem not to provide for such a statutory right.

The extension was further opposed on ground that the petition was improperly before court and the interim protective order ought not to have been issued in the first place. In their view it was irregularly and illegally issued because it lacked a proposed Settlement and Report of the Provisional Administrator on the

Proposed settlement. In counsel's view the court cannot issue an Interim protective order for the company to prepare a settlement proposal or alternatively the court would set key safeguards in place.

The application was further opposed on premise that there are grave procedural irregularities in the management of provisional administration and therefore this renders the whole process a nullity and thus undeserving of the extension.

Analysis

The application is for extension of time or enlargement of time of the provisional administration is intended allow the Provisional administrators exercise their mandate and conclusively end the whole exercise. The 30 days period is not adequate in the circumstances of this case and therefore the need for more time to give the true status of the company.

Provisional administration provides breathing space to achieve a turnaround or structured exit and is designed to hold a business together while plans are formed either to put in place a financial restructuring to rescue the company, or to sell the business and assets to produce a better result for the creditors than a liquidation. ***See Sunshine Agro Products Ltd HCMA No. 344 of 2019***

In the case of ***Uganda Telecom Limited vs Ondoma Samuel t/a Alaka and Company Advocates Miscellaneous Application No. 0012 of 2018***; Justice Stephen Mubiru noted;

“that Under Section 140 of the Insolvency Act 2011, it is evident that provisional administration is a rescue mechanism for the insolvent companies which allows them to carry on running their business, in order to stabilise the company's position and maximise its chances of continuing in business as an alternative to liquidation or a precursor to it. A company seeks provisional administration with the aim of;-ensuring its survival and whole or any part of its undertaking as a going concern, or securing a more advantageous realisation of its assets than would be affected in a liquidation. The procedure designed primarily to deal with situations when there is an urgent need to protect the value of a business from

enforcement action by unpaid creditors. It is designed to forestall action or obtain a memorandum by having an administrator appointed. If, however, it is not possible for the company and its business to continue in existence, the administrator's task is to ensure a better return for the company's creditors and members than would result from an immediate winding up of the company."

The Court remains with the duty to guide the provisional administration by giving directions in order to give effect to the general purpose of insolvency proceedings. The court is wary of setting an extremely high standard to be applied in all cases as the counsel for the secured creditor would wish this court to do. Every effort should be made to render assistance to companies in financial distress rather than setting high bar which would only result in 'killing' every insolvent company.

The applicant seeks court's exercise of discretion to abridge the time earlier on granted by court to help the company reorganize itself financially with all the creditors.

Rule 216 of the Insolvency regulations provides that court may, in any case in which the court considers just, extend or abridge the time appointed by these regulations or fixed by any order of court for doing any act or taking any proceeding.

The court is given wide discretion as it considers the case for extension of time and will always depend on the circumstances of the case. The provisional administrators have engaged the potential financiers who are willing to capitalize the company. This opportunity should not be lost because the secured creditors want the company 'killed' by recovering their secured debts.

The Insolvency proceedings are aimed at assessing the viability of the company to continue in operation or have an orderly manner of winding up for the benefit of all the creditors. The creditors agreed to have a financial audit of the company in order to know the financial status of the company and also have a meaningful discussion of whether to execute a deed of arrangement or not.

The provisional administrators have presented a proposed Business Rescue Plan which will guide the creditors in taking a decision of entering an arrangement or a settlement. This is aimed at ensuring that the company continues operating while at the same time meeting its obligations to all the creditors as opposed to the liquidation of the company which will be detrimental to the company and other creditors.

The interim protective order will only be refused or denied if granting such an order will be detrimental to commercial morality and the interests of the public at large. The courts will generally not allow an insolvent company to carry on business and obtain credit.

It is the court's view that the application for interim protective order was brought in good faith and for the benefit of all the stakeholders. The provisional administrators will be expected to avail financial audits and reports to court for the benefit of all creditors.

Accordingly, this court grants the extension of time of provisional administration for a further period of thirty (30) days.

It is so ordered.

SSEKAANA MUSA
JUDGE
25th April 2023