

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & TAX DIVISION**  
**INSOLVENCY PETITION NO. 25 OF 2018**

**IN THE MATTER OF UCHUMI SUPERMARKETS LIMITED**

**AND**

**IN THE MATTER OF THE INSOLVENCY ACT**

**IN COURT ON 26<sup>TH</sup> SEPTEMBER, 2019 BEFORE**  
**THE HONOURABLE LADY JUSTICE MARY KASANGO**

**ORDER**

**APPLICATION FOR ORDERS:**

1. THAT this matter be certified as urgent and be heard in priority to the winding up petition herein.
2. THAT this Honourable Court be pleased to make an order approving the Company's Voluntary Arrangement ("CVA") passed at the creditors meeting on 2<sup>nd</sup> March 2020 on the following terms:
  - a) All monetary decrees, debt recovery claims, outstanding loan facilities, and rent claims including interest and penalties against the Company as at 2<sup>nd</sup> March 2020 ("the Old debt") be paid in accordance with the CVA;
  - b) All pending execution proceedings inter alia proclamations of attachment, sequestrations, statutory power of sale, distress for rent, or eviction from premises occupied by the Company and any other form of execution proceedings in respect of the Old debt be set aside;
  - c) All pending debt recovery cases, outstanding loans and rent claims before the court of appeal, high court, magistrates courts or tribunals be henceforth marked as settled with the costs of the respective suits to be agreed upon or taxed and paid together with the Old debt as per the terms of the CVA;
  - d) All other contingent liabilities including damages for torts allegedly committed by the Company on or before 2<sup>nd</sup> March 2020 be settled as per the terms of the CVA upon determination of the liabilities thereof by a court or such other competent tribunal;
  - e) The CVA be subject to review after every six (6) months through a meeting of the creditors from the date the CVA is approved herein;
3. THAT in the event the Company defaults on Clause 2 above, six (6) months from the date a CVA order is made herein:



- i) A person may take steps to enforce a security over the Company's property only with the consent of the Supervisor or with the approval of this Honourable Court;
- ii) A person may take steps to repossess goods in the Company's possession under a credit purchase transaction only with the consent of the Supervisor or with the approval of this Honourable Court;
- iii) The Company's landlords may exercise a right of forfeiture by peaceable re-entry in relation to premises let to the Company only with consent of the Supervisor or the with the approval of this Honourable court.

4. THAT the winding up petition herein be marked as settled with costs to the petitioner to be agreed upon or taxed and paid together with the Old debt as per the terms of the CVA.

**UPON READING** the Notice of Motion dated 2<sup>nd</sup> March 2020 and presented to the Honourable Court the Counsel for the Applicant under **Section 3, 628,629 and 692** of the Insolvency Act, No. 18 of 2015, **Regulation 10 and Rule25 (8) and (9)** of the Third Schedule of the Insolvency Regulations, 2016). **AND UPON READING** the supporting affidavit of **MOHAMED MOHAMED** sworn on 2<sup>nd</sup> March 2020 and annexures thereto. **AND UPON HEARING** the Counsel for the Petitioner, Counsel for the Creditor, Counsel for the Creditor and Counsel for the Creditor. **AND WHEREAS** this matter coming up for delivery of Ruling on 1<sup>st</sup> July 2020:

**IT IS HEREBY ORDERED:**

1. THAT the Notice of Motion dated 19<sup>th</sup> March 2020 be and is dismissed with no order as to costs.
2. THAT the court does hereby approve the Company's Voluntary arrangement (CVA) passed at the creditors meeting of 2<sup>nd</sup> March 2020 in the following terms:
  - a. All monetary decrees, debt recovery claims, outstanding loan facilities, and rent claims including interest and penalties against the Company as at 2<sup>nd</sup> March 2020 ("the old debt") be paid in accordance with the CVA;
  - b. All pending execution proceedings inter alia proclamations of attachment, sequestrations, statutory power of sale, distress for rent, or eviction from premises occupied by the Company and any other form of execution proceedings in respect of the old debt be set aside;
  - c. All pending debt recovery cases, outstanding loans and rent claims before the court of appeal, high court, magistrates courts or tribunals be henceforth

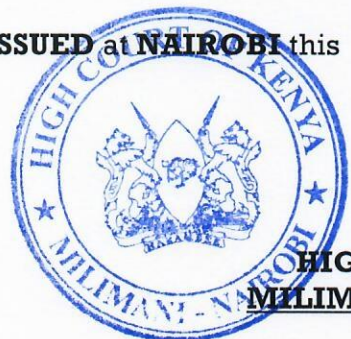


marked as settled with the costs of the respective suits to be agreed upon or taxed and paid together with the old debt as per the terms of the CVA;

- d. All other contingent liabilities including damages for torts allegedly committed by the company on or before 2<sup>nd</sup> March 2020 be settled as per the terms of the CVA upon determination of the liabilities thereof by a court or such other competent tribunal;
  - e. The CVA be subject to review after every six (6) months through a meeting of the creditors from the date the CVA is approved herein;
3. THAT in the event the company defaults on clause 2 above, six (6) months from the date a CVA order is made herein:
- i. A person may take steps to enforce a security over the Company's property only with the consent of the Supervisor or with the approval of this Honourable Court;
  - ii. A person may take steps to repossess goods in the company's possession under a credit purchase transaction only with the consent of the Supervisor or with the approval of the Honourable Court;
  - iii. The company's landlords may exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company only with consent of the Supervisor or with the approval of this Honourable Court.
4. THAT the winding up petition herein be and is hereby marked as settled with costs to the petitioner to be agreed upon or taxed and paid together with the old debt as per the terms of the CVA.
5. THAT there shall be no order as to costs to the Notice of Motion dated 27<sup>th</sup> March 2020.

**GIVEN** under my hand and the seal of this Honourable Court this 1<sup>st</sup> day of July, 2020.

**ISSUED** at **NAIROBI** this 1<sup>st</sup> day of October 2020.



**DEPUTY REGISTRAR**  
**HIGH COURT OF KENYA**  
**MILIMANI - NAIROBI**  
**MILIMANI COMMERCIAL & TAX DIVISION**

Certify that this is a true copy of the original

.....  
Deputy Registrar  
High Court Commercial & Tax Division  
Milimani - Nairobi  
Date: 11/10/2020