

**A CRITICAL ANALYSIS OF THE DUTIES AND LIABILITIES OF A RECEIVER  
UNDER THE INSOLVENCY ACT, 2011 OF UGANDA**

**BY**

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## DECLARATION

I Mulondo Ronald, declare that this research report entitled “**A Critical Analysis of the Duties and Liabilities of a Receiver under the Insolvency Act, 2011 of Uganda**”, is entirely my own work, unless otherwise where duly acknowledged.

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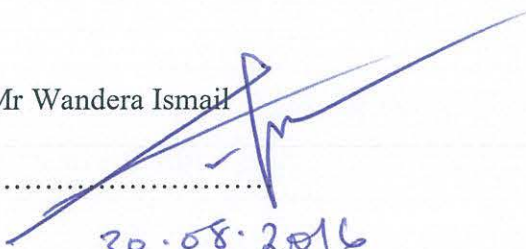
## APPROVAL

The report "A critical Analysis of the Duties and Liabilities of a Receiver under the Insolvency Act, 2011 of Uganda" has been written under my guidance and supervision.

Supervisor: Mr Wandera Ismail

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1:00 pm

## DEDICATION

I dedicate this work to my parents Mr. & Mrs. Mutebi John who have done everything in their means to support me during the Course.

## ACKNOWLEDGEMENT

First and foremost I owe my gratitude to God for providing me with this opportunity to live, and for making me what I am today.

My special gratitude goes to my supervisor Mr Walabyeki Jimmy for correcting and guiding me. Thanks for your patience and understanding words alone can't express my sincere appreciation. Also with special appreciation attached to all the lecturers in the Faculty of Law for imparting professionalism in me; especially Counsel Mulalira Faisal Umar and counsel Nanvuma Jane Francis who tirelessly guided me through the four years.

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## STATUTORY INSTRUMENTS

### Domestic Legislation

The Insolvency Act, 2011

The Mortgage Act, 2009

## LIST OF ACRONYMS

IA : Insolvency Act  
MA : Mortgage Act

## ABSTRACT

It is increasingly clear that receivers play an important role in case of insolvency, in relation to property over receivership, to debtor, guarantor, all persons in whose interests they are appointed and third parties, however much as Insolvency and Mortgage Act sets out the liabilities of áct, as it is in practice today, stake holders under the Act lack enough knowledge as to the duties and liabilities of receivers, some tend to confuse them with those of trustees thus affecting effective realization of the receivership process and in most cases receivership being not preferred by most debtors as one of the best options available to them in case of default in payment by creditor.

Therefore this study seeks to examine the duties and liabilities of a receiver during the Insolvency of a company, the mode of appointment of a receiver and the formalities that are followed therein, how different statutes support the position of a receiver, loopholes in laws governing receivership in Uganda and make recommendations thereafter.

## CHAPTER ONE

### INTRODUCTION

#### 1.0 GENERAL INTRODUCTION

The research looks at the roles and liabilities of receivers in an insolvent company. It discusses the role of a receiver with regard to his duties and powers as contained in the *Insolvency Act, 2011*. The topic shows how the duties and powers of the receiver affect a company which is in financial difficulties as the title reads, “*A Critical Analysis of The Duties and Liabilities of a Receiver Under the Insolvency Act 2011 of Uganda*”. This chapter is broken down into the background of the study, the statement of the problem, the purpose of the study, the objectives, and scope of the study, the significance of the study, methodology and the literature review.

#### 1.1 Background of the Study

In Uganda, the Law relating to receivership is governed by *the insolvency Act 2011(IA)* and *The Mortgage Act, 2009(MA)* and **Case law**. Receivership is entered into when the bank that has backed the company financially or other secured creditors have lost all their confidence in the venture, and they want back their money.

**Black’s Law Dictionary, 8<sup>th</sup> Edition**<sup>1</sup>, defines a receiver as a disinterested person appointed by a court or by a corporation for the protection or collection of property that is the subject of diverse claims. The term receiver however has been defined under the following acts as shown below;

The term receiver is defined to mean “a receiver or manager and includes a receiver and manager or administrative receiver in respect of any property or person appointed as a receiver by or under any document or by the court in the exercise of a power to make such appointment given by the Act or any rule of court or in exercise of its inherent jurisdiction, whether or not the person appointed is empowered to sell any property in receivership.”<sup>2</sup>

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<sup>1</sup> *Blacks, Law Dictionary, 8<sup>th</sup> Edition, Pg 1296.*

<sup>2</sup> *Section 2 Insolvency Act, 2011.*

*The Mortgage Act* further under S.3 goes on to define a receiver as a manager or, or a receiver and manager in respect of any land, and includes any person appointed as a receiver by any document or by the court in the exercise of a power to make such appointment given by any Act or any rule of court, or in the exercise of its inherent jurisdiction<sup>3</sup>.

According to **David Milman Christopher**<sup>4</sup> in his book **Corporate Insolvency**, a receiver is a person who is appointed to take possession of the property which is the subject of a charge and to deal with it primarily for the benefit of the holder of the charge. The primary duty of a receiver is to restore the company into profitable trading and to safeguard the business and its assets for the benefit of creditors rather than to keep the company a viable trading entity<sup>5</sup>. The duties and the liabilities of a receiver will be analyzed.

**ShashiRajan** in his book **Tolley's Corporate Insolvency**<sup>6</sup>, states that, receivers and managers are usually appointed under charges (instruments or deed) executed between the creditors and debtors for purposes of securing debts. These may take the form of a floating charge for example debentures or fixed charges for example mortgages.

Further in this research, the researcher showed how a receiver is appointed and that Receivers are usually appointed for various purposes as according to **Michael Crystal, Mark Phillips, Glen Davis**<sup>7</sup>, receivers may be appointed for the following purposes; to preserve the assets of the company, to safeguard the position of the debtor and the creditors, to protect or safeguard the position between the mortgagor and mortgages.

The research also shows the importance of a receiver on a company which is in financial difficulties and these will be through his role in the settling of debts.

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<sup>3</sup> . The Mortgage act, 2009.

<sup>4</sup> *Corporate Insolvency*, Law and Practice, Pg 48.

<sup>5</sup> David Milman, *Corporate Insolvency* 2 Edition, 1994, pg 48.

<sup>6</sup> ShashiRajani, *Tolley's Corporate Insolvency*, 2 Edition, 1994 Pg. 434.

<sup>7</sup> Butterworths*Insolvency law*, 4th Edition, 1997, Pg 336.

Before the enactment of the *Insolvency Act, 2011* the principal legislation on receivership was the *Companies Act, Cap 110*. Other laws having a bearing on Insolvency matters include the *Mortgage Act, Registration of Titles, The charters Transfer Act, The Civil Procedure Act and Rules*. The law on Receivers then was scattered in different legislations. Therefore it was necessary to have a single legislation, *The Insolvency Act, 2011*.

## 1.2 Statement of the Problem

The law governing duties and liabilities of a receiver under insolvency is drawn from and supported by several legal tools as approved by the government of Uganda such as the *Mortgage Act, 2009, The Civil Procedure Rules (As Amended), The Civil Procedure Act, The Company's Act, 2012, The Insolvency Act, 2011* and also from **Common law principles**.

This study examines mainly the efficiency of the *Insolvency Act, 2011* (IA) to find out to what extent are the powers of a receiver owed to a company or court and when does a receiver become liable and how can he escape liability?

Many companies which have adopted the process of receivership in cases of financial difficulties have been able to overcome these problems through the role of the receiver in an Insolvent company. The appointment of the receiver can be either by the court or under a charge whose primary goal is to settle the debts of the company. Once a company is under receivership, the company will have the same name as the old one but it will end with the term "in receivership". However, the duties and liabilities of a receiver as contained under the *Mortgage Act and the Insolvency Act*<sup>8</sup> have many effects both positive and negative on the company, the directors, employees, the creditors and the debenture holders. In cases where a receiver is appointed by the court, in conducting his duties, he is subject to the control of the court and in carrying out his duties; he is subject to the court's directions and supervision.

It is as a result of this that the researcher decided to carry out an investigation on the duties imposed on the receiver by the law, his roles in the company and his liabilities. This is because many Companies which are faced with financial difficulties tend to ignore or appoint a receiver and only realize his importance too late when the company is about to be wound up.

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<sup>8</sup> Mortgage Act 2009. Insolvency Act 2011.

### **1.3 General Objective of the Study**

The study is to establish the roles and liabilities of receivers in an insolvent company under the IA, the effects of such roles being both positive and negative and whether there are any loopholes on the law on the role and liability of a receiver.

### **1.4 Specific Objectives**

- 1) To examine the mode of appointment of a receiver and the formalities to be followed there in.
- 2) To examine how different statutes support the position of a receiver.
- 3) To examine the duties and liabilities of a receiver during the Insolvency of a company.
- 4) To explore the loopholes on the role of a receiver as contained under the Ugandan statutes and make recommendations.

### **1.5 Scope of the Study**

The study encompasses the role and liability of a receiver in an insolvent company as under the IA and also shows the importance of a receiver and why many companies have succeeded in settling their debts and returning in to profitability through the appointment of a receiver. The research is limited to Uganda, though the examples come from different jurisdictions.

### **1.6 Significance of the Study**

It's vital for companies which are faced with financial difficulties to opt for receivership. This is because, it's through the role of a receiver that, the company will settle its debts and start anew. The research further addresses the loopholes on the role of a receiver as manifested in the role of the receiver.

The findings of the study also show how mainly the roles of the receiver affect the Company directors, creditors, employees and contracts. It also shows how the role of a receiver is affected by the strict rules laid down by the IA.

## 1.7 Methodology

In order to achieve the objectives of the study successfully, the researcher employed the review of resources during library research on various written texts on the subject of Uganda's insolvency laws and how it has affected economic development. These involve reports, journals, articles, seminar papers and law reports for the legal opinion. This was carried out at various libraries among which include: The Kampala International University library, the Law Development Center, the National Library, the High court library and more supplements from the internet, various research papers and booklets. The researcher further used both the qualitative and quantitative methods as a whole which allowed collection of crude material. Internet resources were not left out especially the *ULII*<sup>9</sup> which contains most Ugandan cases was used with utmost clarity on the subject of the research contained in the chapters ahead.

## 1.8 Literature review.

Different authors and scholars have explored the roles and liabilities of a receiver each having different opinions and views on the subject. The scholars and authors have also analyzed the effects of the receiver's duties on the company, directors, creditors and company contracts. Difference will be shown between the existing literature on the law relating to the role of a receiver and the sampled literature.

**Gregory Michaels in his book *Insolvency Solutions*** begins by explaining the three types of receivers and he states that, there are three types of receivers; an administrative receiver who is appointed by a debenture holder under a fixed or as floating charge debenture, a law of property receiver who is appointed under the law of property Act and a receiver appointed by the court. **Gregory's** ideals are very crucial since the three types of receivers can be appointed under different orders and in essence, this helps to gives companies wider opportunities to appoint receivers in case of financial difficulties. However, in the practical sense many companies usually have their security documents providing for the appointment of a receiver and this leads to the neglecting of the other two types of receivers and they are therefore not practically used.

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<sup>9</sup> [www.Ulii.com](http://www.Ulii.com).



The author however does not show the difference between the three types of receivers, how important they are and the reasons as to why a company which is in financial difficulties should opt for one of them but not the others. The research shows how a receiver can be appointed in the debenture documents and how important his role is to the company.

According to **David Milman Christopher**, in his book **Corporate Insolvency, Law and Practice**<sup>10</sup> a receiver is usually appointed for particular purposes. To him, a receiver is appointed to take possession of the property which is the subject of charge and to deal with it primarily for the benefit of the holders of the charge. In my view, David Milman's view is to the effect that, a receiver is appointed to deal with the property of the company for the benefit of the debenture holders is just a formality which in the practical sense is not adhered to. This is because many receivers who are appointed tend to regard their personal interests to those of the company and therefore, use the company's property to benefit themselves other than the company. To the researcher, the author neglected to incorporate a punishment to those who do not conform to this role since many receivers usually go against this role and use the property for their own interests rather than for the company.

He further contends that, many debentures contain or entitle the debenture holder to appoint a receiver. This is justified by the case of **Kosotky vs Kneegers**,<sup>11</sup> where it was held that the burden of proof is on the debenture holder to show that, an event has occurred justifying the appointment of a receiver. **David Milman** in this case has not addressed what kind of financial difficulties can justify the appointment of a receiver since some events might be too minor to result to the appointment of receivers.

The research recommends that, the appointment of receivers should not paralyze the company's business and also shows the reasons as to why the company should continue trading one of them being that, through new contracts and other business transactions, the company might be able to make profits which will enable it to pay off its debts thus escaping winding up.

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<sup>10</sup> David Milman, *Corporate Insolvency 2nd Edition*, 1994, Pg 48.

<sup>11</sup> (1937)4 ALLER 374.

The role of the receiver has effects on the company directors and according to **Charlesworth & Morse** in the book, **Company Law**<sup>12</sup>, when a receiver is appointed, the director's power of controlling the company is suspended but they may have a residue role to play. **Charlesworth** did not stipulate what kind of role the directors have to play and in most of the cases when a receiver is appointed, the directors are left without any role to play in the company. To the researcher therefore, the law should address this issue and provide some duties to the company directors which will help in reviving the company instead of placing the entire control of the company on the receiver.

### **1.9 Chapterization**

The research is comprised of five chapters of which chapter one is basically the introduction to the study, the objectives, and the significance, the methodology involved in the study, chapterization and literature Review. Chapter two involves the appointment of a receiver, effects of the duties of a receiver, preliminaries to the appointment of a receiver, Qualifications of a receiver as provided under the IA, completion of receivership and its impact in the winding up of a company. Chapter three is the Roles of a receiver; Chapter four discusses the Liability of a receiver under the IA and the MA<sup>13</sup> and also considers how a receiver can avoid liability and Chapter five provides the Recommendations and general conclusion.

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<sup>12</sup> Geoffrey Morse *Company Law, 16th Edition 1999*, Pg. 483.

<sup>13</sup> Referred to as the insolvency Act and Mortgage Act alternatively.

## 1.10 Conclusion

In conclusion, it is submitted that the law regarding receivership though in existence is not that much clear and as **Bakibinga** puts it in his book<sup>14</sup>, “A receiver appointed by the court is not anybody’s agent, but is simply an independent officer of the court.” Thus to **Mugambwa**<sup>15</sup> a receiver being a person appointed to receive income of the mortgaged land and to use the proceeds to reduce the mortgage debt, is meant to be clearly appointed thus in the case of **Grindlays Bank (U) Ltd V Edward Boazi**<sup>16</sup> the court stipulated that section 5(4) of the **Mortgage Decree ( now mortgage Act, 2011)** was to the effect that a receiver cannot be dully appointed unless it is done in accordance with the current law, for the effect is that it becomes null and void per see.

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<sup>14</sup> *Company law in Uganda.*

<sup>15</sup> *Principles of land law in Uganda.*

<sup>16</sup> CA No 23 of 1992.

**CHAPTER TWO:**  
**APPOINTMENT OF RECEIVER AND ITS EFFECT ON THE DEBTOR**

**2.0 Introduction**

From the onset, this chapter looks at how a receiver is appointed, the effects of the duties of a receiver, preliminaries to the appointment of a receiver, the provisions of the IA and MA on the qualifications of a receiver. At the climax of this chapter the researcher looks at how receivership comes to an end and its consequences in the winding up of a company.

**2.1 Appointment of receivers**

The receiver's appointment, unless it is by court order is normally made under a deed of appointment which is signed by the debenture holder for example a bank or the trustee for the debenture holders. The deed of appointment is the receiver's authority to act and he can produce it together with the debenture or trust deed and evidence of his authority is required. Once a receiver is appointed by an order of Court or under the powers contained in the charging document, the person obtaining the order or making the appointment should not later than fourteen working days of the appointment give notice to the registrar of the companies who must enter the fact of the Registrar of charges. The issue of notice is also supported by the law under **Section 178**,<sup>17</sup> which is to the effect that, immediately after the receivership's appointment, a receiver shall give written notice of the appointment to the grantor not later than fourteen working days.

In the case of **Grindlays Bank V Boaz**<sup>18</sup> it was held that, the method by which a receiver is appointed is normally specified in the security documents. This mode should strictly be followed otherwise the appointment will be declared fatal.

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<sup>17</sup> *Insolvency Act, 2011.*

<sup>18</sup> SCCA No. 23\1997.

The appointment of a receiver or manager is normally permissible upon the happening of any of a number of events specified in the charge. One of these events is usually the failure to meet a demand for repayment. **Section 22**<sup>19</sup> provides for the appointment of a receiver in that *“it is an implied condition in every mortgage that the mortgagee has the power to appoint a receiver of the income of the mortgaged land”*.

After a receiver’s appointment, the position of the receiver is that he is an agent of the mortgager. **Section 22(6)**<sup>20</sup> provides that *“a receiver appointed under this section shall be deemed to be the agent of the mortgagor for the purposes for which he or she is appointed, and the mortgagor shall, unless the mortgage instrument provides otherwise, be solely responsible for the acts and defaults of the receiver”*

Appointment of a receiver or manager must comply with the terms of the debenture which usually requires the appointment to be made in writing. In **Cryne vs Barclays Bank**,<sup>21</sup> CA Kerr and May LJ held that in the absence of an express term which entitled the bank to appoint a receiver where they, on reasonable grounds considered that their security was in jeopardy such a term could not be implied into debenture. Further **Section 22(3)**<sup>22</sup> is to the effect that the appointment of a receiver shall be in writing and should be signed by the mortgagee.

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19 *Mortgage Act, 2009.*

20 *Ibid.*

21 (1987) BCLC 548.

22 *Ibid* 13.

## 2.2 Effects of the duties of a receiver.

The appointment of a receiver paralyses the powers of the company and its administration in favor of the receiver. As it was held in the House of Lords in **Moss Steamships vs Whinney**<sup>23</sup> that a receiver entirely supersedes the company in the conduct of its business, deprives it of all powers to enter into contracts to sell, pledge or otherwise dispose of the property put into possession of or under the control of the receiver and manager. Therefore the role of a receiver has various effects on the company, directors, employees, charges and contracts of the company. The effects of such roles as addressed as follows.

## 2.3 Effect on the company

On the company, a receiver's duty is to take possession of the company's property and to protect the company's property<sup>24</sup>. A receiver and manager have power to carry on the company's business. However, in general terms, the appointment of receiver paralyses the powers of the company and its administration in favor of the receiver.

## 2.4 Effect on the director

The directors are not dismissed by the appointment of the receiver but their powers to deal with the company's property are suspended during receivership. **Section 183**<sup>25</sup> is to the effect that *where a grantor is an administrative receivership, the company shall not exercise any of its functions or powers and a director or secretary shall not exercise his or her functions or powers, except with the administrative receiver's approval which may be general or specific*. The essence of this is to safeguard the assets of the company which are subject to receivership. Similarly this matches with **section 179**<sup>26</sup> which grants powers to the receiver to take charge over the property of the receivership with reasonable regard to the interests of various persons under the Act.

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23 (1912) AC 254.

24 Cousins, Law of Mortgages, 2<sup>nd</sup> Edition 2001.Pg 139.

25 *Insolvency Act, 2011*.

26 *Ibid* note 27.

**Section 180**<sup>27</sup> still grants the receiver with powers over the property of the company, these powers are express or implied in nature by virtue of **Section 181**<sup>28</sup>.

The receiver therefore is not obliged to pay directors remuneration, which is voted by the members either before or after the receiver's appointment, nor are the directors entitled to any fees granted to them by the articles.

The impact of the appointment of a receiver on the directors is that, they remain in office but their powers to deal with the assets comprised in the charge cease since the charge will usually extend to all assets in the company. Generally they are powerless to run the business. In **Gomba Holdings UK Ltd vs Homan**<sup>29</sup> it was suggested that directors have a contriving duty to exposit the company's assets during receivership but Holfmann J rejected this suggestion and said at page 98-99 *"in my judgment, the board has during the currency of receivership no powers over assets in the possession or control of the receiver"*.

An issue that has arisen is whether the directors are able to bring or initiate proceedings in the company's name. In **Tudor Grange Holding P/C vs Citibank NA**<sup>30</sup>, the court, while reluctantly accepting that there was some authority to the effect they could, found that that they had no power to do so where the receiver's position would be prejudiced by their decision to bring proceedings, for example, by an order for costs against the assets comprised in the charge. The court also indicated that in this type of situation an application to other court for directions is probably appropriate. Further in **Watts vs Midland Bank P/C**<sup>31</sup> court held that directors can initiate an action by the company against the receiver for the improper discharge of his duties.

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27     Ibid.

28     Ibid .

29     (1986) 3 ALLER 94.

30     (1992) Ch 53, (1991) 4 ALLER 1.

31     (1986) BC LC 15.

This is because when a receiver is appointed, he becomes the agent of the company with the result that the company's directors to administer the affairs of the company are restricted by the terms of the mortgage or debenture and the power of the receivers.

## **2.5 Effect on the employees.**

Where a receiver is appointed out of court contracts of employment will continue provided the terms of the appointment make the receiver an agent of the company.

The employees of the company are affected by the roles of a receiver in the winding up of the company. The general rule is that contracts of employment are not affected by the appointment of receiver. However, their contracts will be terminated if the receiver sells the business and if he arranges for new consistent contracts of employment.

**Section 181 (1) (d)**<sup>32</sup> is to the effect that a receiver may inspect at any reasonable time any documents of the grantor or other records relating to the property under receivership, in the custody of the grantor or any other person implying that the employees of a company at any time lose their powers over the documents of the company to the receiver. In the strict sense, employees of the company become accountable to the receiver.

In **Re Mack Trucks**<sup>33</sup> it was held that if the receiver offers employee new contract while he is running the company there is no breach in the continuity of their employment. This is different if he sells the whole business since the sell operates as a dismissal of all staff and if the continuation of the contract of service of a particular employee is inconsistent with the position of a receiver and manager, his appointment will be terminated.

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32 *Insolvency Act, 2011.*

33 (1967) 1 ALLER 977.



## 2.6 Effect on the contracts.

In **Griffiths vs Secretary of State for Social Service**<sup>34</sup> court decided that the appointment of a receiver does not determine contracts entered into by the company before the appointment. But the receiver need not cause the company to fulfill the contract.

This however turns different in instances where the contract is specifically enforceable, as the receiver cannot resist a claim for specific performance. In the case of **Gosling vs Gaskill**,<sup>35</sup> court held that, the appointment of a receiver does not determine the contracts entered into by the company before the appointment. Contracts which are binding on the company when the receiver was appointed continue to bind the company. The essence of this is to enable the company to continue trading though under receivership such that the company can get profits from any sale contracts which will enable it to pay its debts.

On the other hand contracts which were binding on the company when the receiver was appointed continue to bind the company although any enforcement as by selling the company's assets is subject to prior rights of the debenture holders over the assets. The receiver may in his discretion fulfill old contracts. However, although he has discretion he should not disregard contracts if to do so would damage the company's goodwill or even affect the realization of its assets, especially if it seems likely that the company will continue to trade. Thus in **Re Newdigate Colliery**<sup>36</sup>, where the receiver and manager of a mining company could have made a greater profit by disregarding contracts for the formal sale of coal, he was not allowed to drop the contract because of the damage to the company's goodwill.

On the other hand a receiver is allowed to enter new contracts in the course of carrying on the company's business of the other party will accept it he may contract on terms that should not incur liability. This is achieved, if acceptable, by overprinting a stamping all correspondence, orders and other company, and without personal liability. But if this is not acceptable he will contract as an agent for the company but he will be personally liable on contract, with a right of

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34 (1973) 3 ALL ER 1184.

35 (1897) AC 575.

36 (1912) 1 Ch 468.

indemnity against the company's assets, or if he thinks the assets may not be easily realizable, he may have taken an indemnity from debenture holders. In **Moss Steamship Co Ltd vs Whinney**<sup>37</sup> the House of Lords held that receivers appointed by the court are personally liable on contracts entered into in the course of carrying on the company's business because, as independent officers of court, they are not agents of either the company or the debenture holder but contract as principals.

## 2.7 Effect on the debentures

The charge or the debenture holders are also affected by commencement of receivership during insolvency as a receiver is usually appointed by a specific debenture holder to protect his security under a fixed and a floating charge. His appointment causes floating charges to crystallize and this prevents the company from dealing with the assets without his consent. A floating charge crystallizes when some event occurs which causes it to settle and fasten on the subject matter of the charge within its grips. In the case of **Fulgence Mungereza & Anor v Ponsiano Lwakataka & Anor**<sup>38</sup> court stated that the *effect of the appointment of a receiver* stated by the author Sir Raymond Walton in the book "*Kerr on Receivers and administrators*"<sup>39</sup> was as follows;

"Crystallization of floating charge. The appointment of a receiver-who will almost invariably be known as 'an administrative receiver'- is one of the events which cause a floating charge to crystallise. The order operates from the date when the appointment becomes effective. The receiver becomes entitled to possession of the company's assets, and any interference with his possession is a contempt of court. He takes subject to all specific charges which have been validly created by the company in priority to the floating charge, and to all rights of set-off acquired by debtors to the company in respect of dealings with it. But the title of the receiver prevails over that of execution creditors who have not completed their execution, even though the debentures were not issued at the date of the execution, if there was a valid contract for their

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37 (1912) AC 254.

38 Civil Suit no. 819 of 2007.

39 17<sup>th</sup> Ed at pg 158.

issue; it is therefore good against a person who has obtained a garnishee order nisi, or even absolute, if the charge crystallizes before actual payment.”

The essence of crystallizing such assets is to preserve them for the benefit of the company in as much as paying off its debts is concerned.

## **2.8 PRELIMINARIES TO THE APPOINTMENT OF RECEIVER.**

### **2.8.1 Inability to pay debts.**

Section 3<sup>40</sup> explains the nature of inability to pay debts as the basis for the commencement of both individual and corporate insolvency. And that inability to pay occurs when the debtor fails to comply with a statutory demand served on the debtor in accordance with Section 4 of the Act.

In *Re Medipharm Publication Ltd*<sup>41</sup> a petition was lodged asking the court to wind up the company. It was shown that the company was destitute, having a normal capital of BP100, which had since been expended. It had no assets and could not meet its routine obligations. The winding up order was granted.

### **2.8.2 Statutory demand.**

Section 4<sup>42</sup> requires a creditor to serve a statutory demand on the debtor. And the amount of debt cannot be less what is stated in a judgment and for a company it has to be an ascertained debt. The statutory demand requires the debtor to pay the debt or compound with the creditor over the property to secure payment of the debt, to the reasonable satisfaction of the creditor within 21 days after the date of service. The demand further need be unequivocal and must state the consequences and this is mandatory.

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40 *Insolvency Act, 2011.*

41 (1971) UILR 42.

42 *Ibid* 28.

In **Epaineti Mubiruvu Uganda Credit and Saving Bank**<sup>43</sup> it was held that service of a statutory demand is compulsory and the mortgagee must retain proof of service. That the Mortgagee must ensure that the mortgagor is served personally and evidence of this obtained, and where personal service cannot be executed then the mortgagee must obtain from the registrar the direction for substituted service.

However the statutory demand may be set aside by virtue of **Section 5**<sup>44</sup> on the application of the debtor if made within 10 days after the date of service of the demand and the application must be supported by an affidavit as laid out in the case of **Re Teddy SeeziCheeye**<sup>45</sup>.

## **2.9 Qualifications of receiver as provided under the Act.**

**Section 203**<sup>46</sup> gives a substantial meaning of who an insolvency practitioner is defined to mean; *“a receiver, a provisional administrator, an administrator, a provisional liquidator, a liquidator, a proposed supervisor of a voluntary arrangement or a trustee in bankruptcy”* therefore from this a receiver is an Insolvency practitioner.

The qualifications for one to act as a receiver are provided for therein in **Section 204 (1) (a)**<sup>47</sup> which provides that a person is not qualified to be appointed or act as an insolvency practitioner unless *“he or she is a lawyer, an accountant or a chartered secretary who is a registered member of the relevant professional body or is a registered member of any other professional body as the minister may prescribe”*

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43 (1978) HCB 109.

44 *Insolvency Act, 2011.*

45 (1996) V KALR 116

46 *Ibid* 33.

47 *Ibid* 33.

**Section 204 (2)**<sup>48</sup> stipulates the persons disqualified to be appointed or from acting as insolvency practitioner and they are listed below. A person less than twenty five years, a corporate body, an undischarged bankrupt, a person declared by court to be of unsound mind among others.

However a chargee of the property under receivership and a person who has within the two years immediately preceding the commencement of the receivership has been a shareholder, director or auditor of any charge of property in receivership therefore under **Section 207**<sup>49</sup> such persons are disqualified from acting as receivers.

## **2.10 Completion of Receivership and its impact in the winding up of company**

Receivership can come to an end in a variety of ways. **Section 197**<sup>50</sup> provides for the mode of termination of receivership by court and the normal scenario is when the receiver has realized all the available assets covered by the floating charge and has made all the possible distribution to the interested parties in priority sequence determined by the law. Any surplus in funds must be returned to the company. If receivership comes to an end, it's the duty of the receiver to hand back control of the company to the directors. In this case, the directors are supposed to call for delivery up of all books and documents in the possession of the receiver.

The period of the receiver's office ends on the happening of the following events; death, his removal by order of court, resignation and vacation of office on completion of his duties. The role of a receiver has got some effects on the winding up of the company. The receiver's duties help the company to settle its debts and pay all its creditors thus enabling it to start a new and come out of its financial burdens.

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48     Ibid 33.

49     Ibid 33.

50     Ibid 34.

Section 22(5)<sup>51</sup> provides that a receiver may be removed at any time and a new receiver appointed in writing signed by the mortgagee.

Where the receiver has been removed from office it has to be with the consent of court. In the case of **Re Slogger Automatic Feeder Company Limited**<sup>52</sup> it was held that before a receiver has completed his task on the charge, his or her contract can be terminated by court.

## 2.11 Conclusion

In light of the ongoing developments concerning the appointment of a receiver, effects and duties, the law currently available in Uganda is vague since appointment of a receiver affects the debtors, directors as well as the company and its members as a whole. The researcher thus undertook to take an insight into this matter as it is a crucial matter that needs clear cut and well spelt out legislation though much consideration in light of companies is granted to the new Company Act<sup>53</sup>.

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51 The Mortgage Act, 2009.

52 (1915) 1 Ch 478.

53 2012.

## CHAPTER THREE:

### ANALYSIS ON THE DUTIES AND LIABILITIES OF A RECEIVER.

In as far as the IA<sup>54</sup> is concerned; the qualifications of a receiver are farfetched that **section 203**<sup>55</sup> stipulates that **sections 204**<sup>56</sup> and **210**<sup>57</sup> do not apply to an official receiver. This section implies that the definition of an insolvency practitioner given under the sections is not a clear and applicable definition for a receiver.

However under **section 207**<sup>58</sup> certain persons are prohibited from acting as receivers like a chargee of the property under receivership, a person who is disqualified from acting as a receiver by the appointment document and a person who has, within two years immediately preceding the commencement of the receivership been a shareholder, director or auditor of any charge of the property in the receivership.

This coin to one point that in as much as the Act<sup>59</sup> limits the definition to other classes of persons it at least spells out persons not eligible to act as receivers.

Receivership should be looked at as a solution to inability to pay debts; It is not always that the businesses that go under are entirely hopeless cases. Some can be saved and rehabilitated while others are simply irredeemable. Through its corporate rescue mechanism, a good and fair receivership proceeding should be able to identify the viable businesses that are in financial difficulties, provide for their rehabilitation and save them from total collapse. This procedure saves the investments, jobs and also protects trade and commerce from the unsavory effects of losing a trading company.

Receivership should be looked at as a solution to the inability to pay of companies rather than it being looked at as a way of the company going out of business, and eventually winding up.

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<sup>54</sup> IBID.

<sup>55</sup> Insolvency Act supra.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> S.2 IA.

Receivership should be looked at as one of the best solutions to the inability to pay debts by the company, and recourse to it must be made before the recourse to winding up of the company.

Legal training of insolvency practitioners; Insolvency practitioners should be required to have had legal training in the practice of insolvency. With this it will ensure that the only people who can practice insolvency are trained in that particular field. The challenge causes considerable concern as it presents a real possibility of miscarriages of justice in insolvency matters.

Promote public awareness; The lack of understanding of the law and practice is even more profound among the business community. Consequently, many members of the community execute agreements providing for enforcement of securities through receiverships without appreciating the nature and functions of receiverships and other insolvency administrations.

Specialization of laws of receivership; The laws on receivership is specialized in that the Insolvency Regulations govern all the steps that the receiver should take upon being appointed receiver and also, rules governing liabilities of the receiver. The law should make provisions for a debtor to protect himself/herself against his creditors while he/she organizes his affairs and prepares a voluntary arrangement with his creditors.



## CHAPTER FOUR: DUTIES AND LIABILITIES OF RECEIVER

### 4.0 INTRODUCTION

The chapter discusses in details the duties of an appointed receiver particularly under the Insolvency Act, 2011 and the Mortgage Act, 2009. The receiver occupies a very complicated position in legal terms. He/she acts on behalf of his debenture holder yet technically he/she acts as an agent of the company and in instances where he/she is appointed by court, he or she owes a duty to court. In the case of **Gombo Holdings Limited Vs Homan**<sup>60</sup> where court held that the receiver owes duty to the company and to the debenture holder. Therefore the duties of a receiver are stipulated and analyzed below;

### 4.1 The roles of a receiver

Section 180 (1) (a) IA provides that a receiver shall take custody and control of all property which is under receivership. The receiver under this section is required to take possession of the property and protect the property. A receiver has powers to carry on the company's business since the appointment of a receiver paralyses the powers of the company and its administration in favor of the receiver.

A receiver may sell the assets to generate funds to repay the debenture holders.<sup>61</sup> In the case of **Mirror Group Newspaper vs Maxwell**<sup>62</sup> it was held that, office holders including receivers have a duty in realizing the assets of the company for benefit of the debenture holders. The realization of assets by the receiver must first be applied on discharge of any security ranking in priority to the charge under which he was appointed.

A receiver has another role in the insolvency of a company which is to obtain the best price reasonably. The receiver's duty to obtain market value must require that he takes steps to ascertain the market value of the charged assets and it may be necessary for the receiver to obtain valuation of all assets which he has to sell. A receiver may sell the assets in the order in which he

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<sup>60</sup>[1986] 1 WLR 13W at 1305.

<sup>61</sup> David Milman, *Corporate Insolvency*, 2d Edition, 1994, pg 60.

<sup>62</sup>16 (1980) 8CC 324.

sees fit so long as the manner in which he does so is aimed at securing the best price for those assets. In the case of **Bums Philips Trustee Co. Ltd vs Ironside Investment property Limited**, It was held that, in exercising his power of sale, a receiver should obtain the best price reasonably for that property. However, in cases where the receiver fails to obtain the best market price may be due to economic inflation or other factors, the research will show how this will affect the company and its business.

A receiver has the role of exercising due care and diligence in execution of his duties. Accordingly the receiver owes a duty of care to the company and preferential creditors.<sup>63</sup> He also owes a duty of care to any other party having an interest in the equity of the redemption of a subsequent mortgage. In the case of **Standard Chartered Bank vs Walker**,<sup>64</sup> it was held that, a receiver owes a duty to use reasonable care to obtain the best possible price which the circumstances of the case will permit. However this role of duty of care was reiterated in the case of **Downview Nominees Ltd vs First City Corporation**,<sup>65</sup> where it was held that, certain specific duties are imposed on the receiver in equity name; duty to act in good faith, and the duty to take proper.

As one of general duties of a receiver under **Section 180(2) (d) of the Insolvency Act, 2011** is to the effect that a receiver shall give general notice of his interest in all property that has not yet come under his control. The rationale behind this is the fiduciary nature of receivership which prevents the receiver from purchasing the company's assets and he cannot take any profit out of the property distributed to him.<sup>66</sup> Once appointed, a receiver owes a duty of good faith to the company but it's qualified by the recognition that the primary function of the charge is the repayment of the debt.

In the case **Re Johnson & Co. Ltd**,<sup>67</sup> it was held that, in performance of his duties a receiver is regarded as standing in the fiduciary position to the debenture holder who has pointed him under the debenture. A receiver owes fiduciary duties to the company and cannot therefore purchase

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<sup>63</sup> David Milman, *Corporate Insolvency*, 2<sup>nd</sup> Edition 1994, Pg. 64.

<sup>64</sup>(1982) IVOLR 410.

<sup>65</sup>(1993) AC.

<sup>66</sup> Butterworth's, *Insolvency Law*, 4th Edition 1997 pg. 41.

<sup>67</sup>(1955)2 ALLER 776.

the assets of the company subject to receivership. In the case of **Nugent vs Nugent**<sup>68</sup>, it was held that a receiver appointed by court, could not purchase land subject to receivership. The essence of fiduciary duties of a receiver is to preserve the assets of the company and to safeguard the position of the debenture holder by providing that receivers should not purchase assets subject to receivership. This is because a receiver who purchases assets of a company might opt to sell for himself for a lower price than what is required and therefore detrimental to the debenture holders and the company since the company will be unable to meet its debts.

A receiver has another role of entering proper records of accounts **Section 180(2) (g) of the Insolvency Act**. This is to the effect that, a receiver under Act has the powers contained in an instrument should deliver to the registrar of companies for registration, the requisite accounts of his receipts and payments<sup>69</sup>. In the case of **Smiths Limited vs Middlemton**<sup>70</sup> it was held that, a receiver was subject to the agent's duty to render the accounts to his principals. However, the essence of this role of rendering proper records of account is to safeguard the company from any corrupt dealings by the receiver. This is because, if the receiver engages in any corrupt dealings, the company which is under receivership will not be able to meet its primary goal of setting its debts.

The receiver liable for rent **Section 22(9) of the Mortgage Act, 2009** provides for the statutory duty of the receiver under the mortgage. The receiver under this section is required to apply all monies received by him or her in the order of priority given under the section. **Section 22(9) (a) of the Mortgage Act 2009** provides that, the receiver is liable to apply monies received in the payment of all rents, rates, charges, taxes and other out-goings required to be paid in respect of the mortgaged property.

Receivers mainly play a role in settling the company's debts and helping the company to return to profitability. Different authors have written on the role of receivers, however these roles are inadequate and some of them affect the company negatively which is detrimental to the process of receivership. This role though not clearly spelt out in the Insolvency Act, 2011.

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<sup>68</sup>25(1908)1 Ch 540.

<sup>69</sup>*Butter-worth's, Insolvency Law, 4th Edition, 1997 pg.38.*

<sup>70</sup>(1979)3 ALLER 834.

**Kerr, on the law and practice as to Receivers,**<sup>71</sup> states that, the object of appointment of a receiver is to safeguard the property for the benefit of those entitled to it. It enables persons who possess rights over property to obtain the benefit of those rights and to preserve the property pending the realization where ordinary legal remedies are defective and to preserve the property from some danger which threatens it. The general duty therefore of a receiver is to take possession of the estate, or other property of the subject matter of dispute in action, compel payment of them, management, letting lands and houses and collecting and realizing it. This in the practical sense is the primary duty of receivers which should be performed with great care and diligence so as to achieve the main objective of receivership which is to settle the company's debts.

**Lee Christen in his Book Corporation Law**<sup>72</sup> says that, a receiver appointed pursuant to a security document has a primary duty to realize the assets charged by the debenture with a view to liquidating the debt owing to the mortgage. A receiver's power to sell the charged assets arises from the terms of debenture pursuant to which he is appointed together with the plenary. This was the holding in the case of

**Section 3 1 (b) of the Mortgage Act** empowers the company as a mortgagee to sell the property for the benefit of the debenture holders. In exercising his power of sale, a receiver has duties generally to protect the interests of the mortgagee, to mortgagor, the subsequent encumbrance as well as the guarantors of the debt secured by the debentures.

Thus in the case of **JOHN VERJEE & ANOR V SIMON KALENZI & ORS**<sup>73</sup> *Twinomujuni JA*, held that,

Once a receiver has taken possession of the property before attachment, that property cannot be attached by the other subsequent decree holders against the judgment debtor.

Furthermore, in that same case, **Kitumba JA** found that although receivers are in law the agents of the debtor company, they hold property to pay the debts of the company, and therefore, the receivers were in possession not on behalf of the judgment debtor but for the mortgagee.

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<sup>71</sup> Raymond Walton, *Law and practice on Receivers*, 1<sup>st</sup> Edition, 1983, pg 5

<sup>72</sup> Lee Christen *Corporation law*, vol 6.No3/1997 pg 86

<sup>73</sup>[1997-2001] UCLR 83

This implies that the receiver has a power of sale of the property to realize the settlement of the debt and similarly to exercise due diligence in his duties. It means that in light of **section 181(c)**<sup>74</sup> since the receiver has powers to manage the property under the receivership he/she must exercise due diligence and care.

**Section 182**<sup>75</sup> further stresses that a person who is paying money to a receiver should not inquire as to his/ her appointment but rather take a receiver to be so as he is bound.

The due diligence of a receiver extends to **section 184**<sup>76</sup> which grants the grantor a right to sue a receiver among other persons which means that receivers should be careful while doing their work. Thus in the case of **Watts V Midland Bank**<sup>77</sup> the court held that directors can initiate an action by the company against the receiver for the improper discharge of his duties.

#### 4.2 Conclusion.

In conclusion, the **IA**<sup>78</sup> prescribes that upon appointment of the receiver, he/she takes possession and **section 189**<sup>79</sup> the is mandated to make a preliminary report within forty working days after his or her appointment to the guarantor or any other persons prescribed under **section 191**<sup>80</sup>. This report can also be made subject to **section 190**<sup>81</sup> within twenty working days after the end of every six month during the receivership and termination of the receivership which implies that as discussed inter alia, the researcher noticed that the law is a little bit clear on the issue of duties and obligations of a receiver.

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<sup>74</sup>Insolvency Act Ibid.

<sup>75</sup> Ibid note 70.

<sup>76</sup> Ibid note 70.

<sup>77</sup>(1986) BC LC 15.

<sup>78</sup> Ibid note 70.

<sup>79</sup> Ibid note 70.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

## THE LIABILITIES OF A RECEIVER

### 4.1.0 INTRODUCTION

This chapter analyses the liability of receiver under the **Insolvency Act**<sup>82</sup> and the **Mortgage Act, 2009**. The chapter shows how a receiver is appointed vis a vis his liability. The chapter seeks to analyze the legal regime that is backed by the current IA and the Mortgage Act but the researcher undertook to find a viable analysis of the laws, their loopholes and the current challenges regarding the liability of a receiver. It is well known that receivers play a crucial role especially in cases of bankruptcy, and need a law that protects or governs their roles, hence the researcher undertook to analyze the nature of such liability and the position of the current legal regime on the issue.

### 4.1.1 The liability of the receiver under IA and the MA

Receivers shall be personally liable for any contract entered into by them. **Section 186(1) (a) IA**<sup>83</sup> provides that “*a receiver shall be liable for any contract entered into by the receiver in the exercise of any of the receiver’s powers.....*” This however is quite similar to the principle of lifting the “*corporate veil*” where directors are always held personally liable for their actions. Therefore, where receivers get involved in fraudulent contracts or erroneous contracts at the expense of the grantor, the directors will be held liable and not the grantor.

A receiver can also be held liable for failure to take control of the company’s assets as quickly as possible especially after his appointment, as the rationale behind this is to preserve the assets and prevent their disappearance. He is expected to do this within any limited time by verifying the company’s title to assets, such as stock or equipment supplied under reservation and not fully paid.

The principle at common law however, is that a receiver who takes possession of, or sells a third party’s assets, or does some other act inconsistent with that party’s right to possession, the liability the receiver incurs the normal liability in tort for transfer or conversion even if he acts Bonafide.

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<sup>82</sup>Referred to as the Insolvency Act 2011.

<sup>83</sup>Ibid.

A receiver is liable for all loss and damage to the property due to his willful default, misconduct or negligence. However, he/she cannot be held liable for any loss where he has acted honestly and without negligence. In **Downs View Nominees Limited v First City Corporation Limited**<sup>84</sup> it was held that a receiver doesn't owe a duty of care in tort for negligence.

A receiver is liable to render true accounts of the company and account for all money received in his capacity as receiver. In the case of **Smiths Limited Vs Middleton** it was held that a receiver was subject to render true accounts of the company.

Furthermore for acts in excess of the receivers' duty, the receiver acts ultra vires contrary to **Section 181 IA**. For instance a receiver cannot delegate his authority to another. It then follows that a prudent receiver should examine with care, the duties and powers conferred on him by the terms of the appointment. Failure to do so exposes the receiver to personal liability.

A receiver is liable for breach of statutory duty if he fails to fulfill his fundamental duties as spelt out under **Section 179 IA** which provides that "*the fundamental duty of a receiver is to exercise his or her powers in a manner which he or she believes on reasonable grounds to be in the best interests of all persons in whose interests the receiver is appointed*". To this however the receiver is not expected to act ultra vires and should exercise such powers lawfully as provided for under the Insolvency Act.

Order XLII Rule 4<sup>85</sup> provides that, where a receiver:

..... (a) *Fails to submit his or her accounts at such period and in such form as the court direct;*

(b) *Fails to pay the amount due from him or her as the court directs; or*

(c) *occasions loss to the property by his or her willful default or gross negligence, the court may direct his or her property to be attached, and may sell the property, and may apply the proceeds to make good any amount found to be due from him or her, or any loss occasioned by him or her, and shall pay the balance, if any, to the receiver...*

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<sup>84</sup>(1993) Ac 145.

<sup>85</sup>The Civil Procedure Rules.

In the event of personal liability, the receiver is entitled to indemnity out of the property under the receivership by virtue of **section 187**<sup>86</sup>.

Under **section 195**<sup>87</sup> on the application, of the receiver, the court may give directions to any matter concerning the functions of the receiver, and if the receiver acts in accordance with the directions of the court he/she shall have a defense for any claim in respect of the exercise of his powers<sup>88</sup>.

An application for the enforcement of the receiver's duties may be made by any person prescribed under **Section 196**<sup>89</sup> like a receiver, guarantor or liquidator. In practice, a copy of any application made under the above mentioned section shall be served on the receiver not less than five working days before the hearing of the application and the receiver may appear and be heard at the hearing.

#### **4.1.2 How to avoid liability**

**Section 188**<sup>90</sup> is to the effect that the court has the powers to relieve a receiver from all or any personal liability in the course of the receivership if satisfied that

*(a) the liability was incurred solely by reason of a defect in the appointment of the receiver;*

*or*

*(b) The receiver acted honestly and reasonably and ought, in the circumstances, fairly to be excused.* Therefore if court can get satisfied by these grounds, then the receiver can escape liability. On the other hand a receiver can avoid liability if he or she executes his acts in a Bonafide manner.

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Section 195(3) Insolvency Act Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> The Insolvency Act, 2011.



#### 4.1.3 Conclusion.

A receiver shall be liable for any contract entered into by him/her in the exercise of any of his/her powers, rather, the fundamental duty of a receiver is to exercise his or her powers in a manner which he or she believes on reasonable grounds to be in the best interests of all persons in whose interests the receiver is appointed as well assessed above.

This is so because the IA<sup>91</sup> places stringent measures on the breach of his/her duties and supervision, which extends to court.

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<sup>91</sup> *ibid.*

## CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

### 5.1 INTRODUCTION

The law of receivership in Uganda is wanting in a few areas. If this law were to be reviewed in relation to its faults, the practice of receivership in Uganda will be nearly flawless. Receivership will be seen as one of the best solutions for creditors in realizing their debts. Receivership should not be looked at as just a step towards the company's winding up, but rather it should be looked at as a solution to an insolvent company in financing its debts.

The laws of receivership should provide mechanisms that enable both the debtor and creditor to participate with the least possible delay and expense, and it should also so far as is convenient and practical, support the commercial and economic processes of the community. The laws governing receivership and its practice have not been understood and as a result, there is at least a whole generation of lawyers, businessmen and financial consultants who cannot appreciate or understand the workings and functions of receivership.

### 5.2 RECOMMENDATIONS

#### 5.2.1 Regulation of receivers

In as far as the IA<sup>92</sup> is concerned; the qualifications of a receiver are farfetched that **section 203**<sup>93</sup> stipulates that **sections 204**<sup>94</sup> and **210**<sup>95</sup> do not apply to an official receiver. This section implies that the definition of an insolvency practitioner given under the sections is not a clear and applicable definition for a receiver.

However under **section 207**<sup>96</sup> certain persons are prohibited from acting as receivers like a chargee of the property under receivership, a person who is disqualified from acting as a receiver by the appointment document and a person who has, within two years immediately preceding the

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<sup>92</sup> IBID.

<sup>93</sup> Insolvency Act supra.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

commencement of the receivership been a shareholder, director or auditor of any charge of the property in the receivership.

This coin to one point that in as much as the Act<sup>97</sup> limits the definition to other classes of persons it at least spells out persons not eligible to act as receivers.

### **Receivership seen as a means of enhancing growth**

It is a common and undisputed fact that economic growth of any nation largely hinges on the levels of access and availability of credit. Entrepreneurs, traders, investors and other businessmen often lack funds to establish and promote their enterprises and undertakings. Their recourse is to take out credit from financial institutions. However, no financial institution will avail credit unless it is confident it will recover its money. Through receivership proceedings, creditors are given the confidence that their monies advanced, can be recovered from the defaulting debtors.

### **5.2.2 Receivership should looked at as a solution to inability to pay debts**

It is not always that the businesses that go under are entirely hopeless cases. Some can be saved and rehabilitated while others are simply irredeemable. Through its corporate rescue mechanism, a good and fair receivership proceeding should be able to identify the viable businesses that are in financial difficulties, provide for their rehabilitation and save them from total collapse. This procedure saves the investments, jobs and also protects trade and commerce from the unsavory effects of losing a trading company.

Receivership should be looked at as a solution to the inability to pay of companies rather than it being looked at as a way of the company going out of business, and eventually winding up. Receivership should be looked at as one of the best solutions to the inability to pay debts by the company, and recourse to it must be made before the recourse to winding up of the company.

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<sup>97</sup> S.2 IA.

### **5.2.3 Legal training of insolvency practitioners**

Insolvency practitioners should be required to have had legal training in the practice of insolvency. With this it will ensure that the only people who can practice insolvency are trained in that particular field. The challenge causes considerable concern as it presents a real possibility of miscarriages of justice in insolvency matters.

### **5.2.4 Promote public awareness**

The lack of understanding of the law and practice is even more profound among the business community. Consequently, many members of the community execute agreements providing for enforcement of securities through receiverships without appreciating the nature and functions of receiverships and other insolvency administrations.

### **5.2.5 Specialization of laws of receivership**

The laws on receivership is specialized in that the Insolvency Regulations govern all the steps that the receiver should take upon being appointed receiver and also, rules governing liabilities of the receiver. The law should make provisions for a debtor to protect himself/herself against his creditors while he/she organizes his affairs and prepares a voluntary arrangement with his creditors.

### **5.2.6 Personal liability of receiver**

The receiver should be personally held liable for his/her negligence. By personally holding the receiver liable, he/she will be more careful while in the office and with this the problems associated with receivership will be less. Therefore, there should be more provisions spelt out for the personal liability of a receiver.

### **5.2.7 Inefficiencies and delays in the dispensation of commercial justice**

The past delays and inefficiencies of the Ugandan court systems in the dispensation of justice have discouraged some of the creditors from invoking this law. It is only logical that where a country's enforcement regimes are unreliable, transactions will be carried out through some other form of private enforcement.

### **5.2.8 Improve on Jurisprudence**

Ugandan Courts have little jurisprudence on insolvency proceedings because the law has stayed untested in our statutes for such a long time. This presents a serious challenge in the development and interpretation of the law of insolvency. There is therefore a need to build capacity and expertise so as to develop an insolvency regime that is relevant to the country's unique needs.

### **5.10 Provide rules for licensing of insolvency practitioners**

Since the IA<sup>98</sup> does not clearly spell out provisions for the licensing of insolvency practitioners. There is an urgent need for an imposition of rules that call for the registration of insolvency practitioners, so as to be able to monitor their work especially when it comes to court supervision. In this way the country will have qualified and efficient insolvency practitioners, rather than half baked practitioners as one may say.

### **5.11 An insolvency Committee should be set up**

I would recommend that the courts take charge and play a crucial role in the setting up of an Insolvency Committee through the Acts governing insolvency.

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<sup>98</sup> *ibid.*

This committee will be a good move to ensure that insolvency practitioners are monitored, supervised and kept on record so as to have qualified personnel. The essence of the move is to see that the government as well as the courts has a body to refer to the matters concerning insolvency practitioners like the National Bureau of Standards which is mandated to ensure that Ugandans receive good quality goods and services that render value for their money not counterfeits.

### **5.12 Professional bodies should also take part in producing competent practitioners**

It is well known that for any legal system to stand the test of time there is need for other professional bodies to take part. To make myself clear, in Uganda such bodies may include the Uganda Law Society, Uganda bureau of Statistics which is an accounting body that makes statics regarding a particular trend for example such a body can be fundamental in giving the statistics for the work load done by insolvency practitioners in as far as solving insolvency matters is concerned in Uganda as a whole. The ULS<sup>99</sup> may also help in ensuring that insolvency practitioners are qualified in conjunction with the Law Development Centre<sup>100</sup> which is mandated to put out qualified lawyers or practitioners and train or equip them with legal phenomena.

### **5.13 Conclusion.**

Uganda took a step forward with the introduction of the Insolvency Act. With the passing of this law, insolvency practices in Uganda developing for the better. In light of the above chapters, it is clear that receivers play a great role when a company is faced with financial difficulties. As portrayed in the research findings, the receiver's appointment unless it's by court is normally made under a deed of appointment which is signed by the debenture holders. This in the long run helps to improve the company's profitability and settle its debts.

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<sup>99</sup>Uganda Law Society.

<sup>100</sup>LDC.

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