



REPUBLIC OF KENYA



**In re Kilimo Innovations Limited (Insolvency Cause E013 of 2022)
[2023] KEHC 20859 (KLR) (Commercial and Tax) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20859 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E013 OF 2022
DO CHEPKWONY, J
JUNE 27, 2023**

RULING

1. This Ruling is pursuant to the Liquidation Petition dated April 22, 2022 filed by the Petitioner, Joseph Methu in his capacity as the sole Director of Kilimo Innovations Ltd (“the Company”) pursuant to section 425 of the *Insolvency Act*. It is supported by the Affidavit of Joseph Methu sworn on April 12, 2022.
2. According to the petitioner, the Company was incorporated on February 3, 2017 under Registration No.[particulars withheld]. He states that the nominal capital is Kshs.100,000.00 divided into shares of 100 shillings each. He further states that the Company’s objects were to oversee the preparation of farms, acquisition of seedlings and manure, planting of crops and irrigation and finally harvesting and selling the crops on the market for a profit.
3. The Petitioner holds that in the year 2018, it entered into a management agreement with Marula Estates Limited which was to provide a vegetable scheme and the Company would then engage in horticultural farming. It is the petitioner’s contention that the business venture was non-profitable due to the high cost of farm inputs and other expenses. Also, that Covid-19 Pandemic negatively affected the Company which has suffered lack of business for the past three years and it does not have any employees.
4. The Petitioner states that the Company is facing a claim of Kshs.9,661,504.59 owed to Marula Estates Limited, which debt it does not have prospects of paying. Due to this, the Petitioner contends that it is insolvent and unable to pay its debts, thus seeks a liquidation order and for the appointment of an official receiver.
5. The Petitioner has filed Certificate of Compliance dated May 4, 2022, an Affidavit of service sworn on July 1, 2022 whereupon the Gazette Notice No.7440 was issued in respect of the Company and an Affidavit of Confirmation of Service of Newspaper Advertisement in the Daily Nation of Monday July 18, 2022 duly notifying the public, particularly the Creditors of the Company’s inability to pay its debts.



6. For the court to allow a liquidation order, there must be proof that the public, and more particularly, the Creditors have been notified of the Liquidation Petition and have been given adequate time to respond. In the case of *Ukwala Supermarket Limited* [2019] eKLR, the court stated thus:-

“To grant an order for liquidation, the court must be satisfied that the creditors are aware of the Petition and are given sufficient time to respond. The court must thus have regard to a number of diverse and contrasting factors before reaching an ultimate conclusion. Without limitation, the following factors to be considered in the exercise of discretion whether or not to make a liquidation order include; (i) the effect of an order under section 425 would have on the rights of secured and unsecured creditors as balanced with that of the Company, (ii) the insolvency level of the Company both commercially and under the balance sheet”.

7. In this instant case, since the Petition is unopposed and the Creditors having been given adequate time to respond, the Court proceeds to allow the Liquidation Petition as prayed. This is done in the light of the fact that the Petitioner in instituting the Liquidation Petition, has complied with the statutory provisions set out under section 425 of the *Insolvency Act*. The Company Director who has brought the Liquidation Petition is one of the persons eligible to file the Petition and the grounds raised therein of inability of the Company to pay its debts conforms to section 384 of the *Insolvency Act*.

8. It is trite that the court obtains the powers to liquidate a Company under section 424 (1) (e) of the *Insolvency Act*, if among other factors, the Company is unable to pay its debts. In this case the Company filed the mandatory Statement of Company’s Financial Position which shows the liabilities of Kshs.9,661,504.59 which exceed the Company assets.

9. The Liquidation Petition dated April 22, 2022 is hereby allowed as prayed.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 27TH DAY OF JUNE, 2023.

D. O. CHEPKWONY

JUDGE

