



REPUBLIC OF KENYA



**In re Invesco Assurance Company Limited (Insolvency Petition
10 of 2021) [2022] KEHC 17030 (KLR) (22 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 17030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
INSOLVENCY PETITION 10 OF 2021
MN MWANGI, J
APRIL 22, 2022
IN THE MATTER OF: INVESCO ASSURANCE COMPANY LIMITED
AND
IN THE MATTER OF: THE COMPANIES ACT NO. 17 OF 2015**

RULING

1. On November 15, 2021, the petitioner/creditor herein, Tungwa Nyanje Tungwa (hereinafter “the creditor”) filed an insolvency petition herein against the debtor/company Invesco Assurance Company Ltd (hereinafter “the company”) seeking the following orders -
 - i. That the company be liquidated by this honourable court under the provisions of the *Insolvency Act* No 18 of 2015;
 - ii. That the costs be provided for;
 - iii. That a person other than the official receiver be appointed under the provisions of the *Insolvency Act* No 18 of 2015 as a liquidator; and
 - iv. That such other order and/orders may be made in the premises as the court shall deem just.
2. The petition is premised on grounds in the petition that-
 - a. A declaratory suit was filed in Mariakani SRMCC No 230 of 2019 Tungwa Nyanje Tungwa vs Invesco Assurance Company Limited wherein judgment was delivered in favour of the petitioner for the sum of Kshs 791,000.00 after which a decree was extracted and served upon the company ordering it to pay a decretal sum of Kshs 907,291.00, which included interest and costs;
 - b. Several attempts like insolvency and attachment have been made against the company at the instance of the petitioner to recover the said sum of Kshs 907,291.00 but due to the company’s intransigent disposition, the same has not been accounted for to date; and
 - c. That it is just and equitable that the company be wound up.



3. When the matter came up for mention on January 25, 2022, counsel for the petitioner Mr Muganda informed this court that the instant petition had been served by way of advertisement in the dailies on November 25, 2021. An affidavit of service dated December 10, 2021 and filed on January 9, 2022 also demonstrated that there was service of the petition, the statutory demand and verifying affidavit upon the respondent at its offices situated at Mombasa Trade Centre, 4th Floor, South Wing, Nkurumah Road, Mombasa.
4. This court on the January 25, 2022 directed that the respondent be served with a hearing notice of the petition. It came up for hearing on February 15, 2022, and service of the hearing notice was confirmed vide an affidavit of service dated January 25, 2022. Despite proper service of the hearing notice, the respondent did not file any response to the petition and did not attend court for hearing, and no creditor had filed its opposition to the petition. Since the petition was not opposed, counsel for the petitioner submitted that in compliance with section 22 of the *Insolvency Act*, the official receiver should appoint a liquidator. He stated that the petitioner had paid a sum of Kshs 40,000.00, which is the official receiver's expenses. He prayed for the petition to be allowed.

Determination

The issue for determination is if the insolvency petition has merits.

5. Section 384(1) and (2) of the *Insolvency Act* deals with circumstances under which a company can be declared as being unable to pay its debts. It provides as follows:

- “(1) For the purposes of this part, a company is unable to pay its debts—
- (a) If a creditor (by assignment or otherwise) to whom the company is indebted for hundred thousand shillings or more has served on the company, by leaving it at the company's registered office, a written demand requiring the company to pay the debt and the company has for twenty-one days afterwards failed to pay the debt or to secure or compound for it to the reasonable satisfaction of the creditor;
 - (b) If execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
 - (c) If it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.
- (2) A company is also unable to pay its debts for the purposes of this part if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities (including its contingent and prospective liabilities).”

6. Section 424(1) of the *Insolvency Act* stipulates as follows-

- “A company may be liquidated by the court if—
- (a) the company has by special resolution resolved that the company be liquidated by the court;



- (b) being a public company that was registered as such on its original incorporation—
 - (i) the company has not been issued with a trading certificate under the Companies Act, 2015; and
 - (ii) more than twelve months has elapsed since it was so registered;
- (c) the company does not commence its business within twelve months from its incorporation or suspends its business for a whole year;
- (d) except in the case of a private company limited by shares or by guarantee, the number of members is reduced below two;
- (e) the company is unable to pay its debts;
- (f) at the time at which a moratorium for the company ends under section 645— a voluntary arrangement made under part IX does not have effect in relation to the company; or
- (g) the court is of the opinion that it is just and equitable that the company should be liquidated.” (emphasis added).

7. Applications for liquidation are provided under section 425 of the [Insolvency Act](#). In the said section, the following persons qualify to file a petition for liquidation.

- a) The company or its directors.
- b) A creditor or creditors (including any ...prospective creditor or creditors,
- c) A contributing or contributories of the company.
- d) A provisional liquidator or an administrator of the company.
- e) If the company is on voluntary liquidation- the liquidator.

8. It is evident that the petitioner is a creditor of the company. It is thus entitled to bring this petition under section 425(1)(b) of the [Insolvency Act](#). I am also satisfied that the company was served with a statutory notice under section 384(1)(a) of the [Insolvency Act](#) as a pre-condition for presentation of this petition. It is uncontroverted that there is a court decree against the company, which remains unsatisfied to date. The petitioner has therefore established grounds for liquidation of the company and as a result, the petitioner is entitled to an interim order of liquidation pursuant to section 427(1)(c) of the [Insolvency Act](#).

9. In the end, and for reasons I have set out above, I make the following orders:

- (a) An interim liquidation order is hereby issued in respect of the company, Invesco Assurance Company Limited;
- (b) That a person other than the official receiver be and is hereby appointed as the provisional liquidator of Invesco Assurance Company Limited; and
- (c) Costs of the petition shall be borne out of the company assets.

DATED, SIGNED AND DELIVERED AT MOMBASA ON THIS 22ND DAY OF APRIL, 2022.



In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, The then Chief Justice on the 17th April, 2020 and subsequent directions, the ruling herein has been delivered Through Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Chebukaka for the petitioner

No appearance for the respondent

Mr. Oliver Musundi – Court Assistant.

