



Dreamline Express Limited v Africa Merchant Assurance Company Ltd (Insolvency Petition E002 of 2020) [2022] KEHC 11907 (KLR) (Commercial and Tax) (19 August 2022) (Ruling)

Neutral citation: [2022] KEHC 11907 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

INSOLVENCY PETITION E002 OF 2020

A MABEYA, J

AUGUST 19, 2022

**IN THE MATTER OF AFRICA MERCHANT
ASSURANCE COMPANY LIMITED “THE COMPANY”**

AND

IN THE MATTER OF THE INSOLVENCY ACT NO 18 OF 2015

BETWEEN

DREAMLINE EXPRESS LIMITED CREDITOR

AND

AFRICA MERCHANT ASSURANCE COMPANY LTD DEBTOR

RULING

1. This petition concerns Africa Merchant Assurance Company Limited (the Company).
2. The petitioner presented the liquidation petition dated September 7, 2020 as a creditor. It stated that the company was indebted to it for Kshs 2,401,447/28 following a partial judgment in Makindu CMCC No 241 of 2019 *Dreamline Express Ltd v Africa Merchant Assurance Co Ltd* vide the court order dated January 22, 2020.
3. The initial amount was Kshs 3,714,662/= inclusive of costs and auctioneers fees, but Kshs 1,313, 214.28/= was recovered from garnishee proceedings leaving the aforesaid balance of Kshs 2,401,447/28. A 21 day insolvency notice had been served upon the debtor but it failed to comply.
4. That execution had already commenced against the petitioner and its vehicle registration No KBW 084D was attached and to be auctioned on August 2, 2019. That storage and auctioneer fees had thus arisen.



5. The petitioner answered the creditor's petition vide the answer dated June 4, 2020. It contended that the creditor had not pleaded that the company had failed to meet the capital adequacy ratio or solvency margins prescribed under section 41 and 42 of the *Insurance Act*.
6. That the petition was fatally defective for failing to be served on all the company's creditors, that the alleged debt was not sufficient or equitable reason to liquidate the company as it was one of the largest insurance companies in Kenya. That the debt arose from insurance claims and could be pursued through other modes of execution. The company also disputed the petition amount and contended that the petitioner's decree had been settled.
7. The petitioner filed a response dated November 25, 2021. It was contended that the decree of Kshs 3,714,662/= was inclusive of incident costs and charges in Makindu CMCC No 508 of 2015 including costs and auctioneers fees. That the decree had not been appealed against. That at the time of filing the petition, the amount to be paid was Kshs 2,401,447/28.
8. In the course of the petition's proceedings, the parties negotiated and the debtor made a payment to the creditor leaving a balance of Kshs 600,000/= which was contested by the debtor on grounds that the creditor's claim had surpassed the Kshs 3 million cap and the amount was unpayable. The debtor's case was therefore that the entire amount had been settled.
9. On June 28, 2021, the court directed that the parties file written submissions within 30 days on the issue whether the balance of the debt could be addressed by the insolvency court or not. The petitioner filed its submissions dated November 25, 2021, there were no submissions on record from the debtor.
10. The court has considered the record in its entirety. The issue for determination is whether the debt of Kshs 600,000/= is to be dealt with by this court sitting as an insolvency court.
11. It is not in dispute that the sum of Kshs 600,000/= claimed is directly related and connected to the petitioner's claim for Kshs 2,401,447/28 which cumulated to Kshs 3,714,662/= due to costs and auctioneer's fees.
12. However, the company contends that the same is not due since it exceeds the amount that it is liable to pay under the law. That is a legal defence. That being so, the amount cannot be a basis for a liquidation petition or insolvency proceedings.
13. I say so because, where a debt is properly disputed, the same cannot be a basis for such proceedings.
14. In this regard, that is a claim that should be enforced through civil proceedings either through attachment or by other means than insolvency proceedings. The petition is hereby struck out with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF AUGUST, 2022.

A. MABEYA, FCIArb

JUDGE

