



**In re Royal Swiss Bakery Limited (Insolvency Petition E004 of 2022)  
[2022] KEHC 16895 (KLR) (Commercial and Tax) (22 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16895 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY PETITION E004 OF 2022**

**DAS MAJANJA, J  
DECEMBER 22, 2022**

**JUDGMENT**

1. Royal Swiss Bakery Limited (“the Company”) is a limited liability company incorporated under the *Companies Act*, 2015. Its principal business is to bake and distribute bread in Kenya. In has presented the petition dated 22<sup>nd</sup> October 2022 seeking an order of liquidation and appointment of a Liquidator. The Petition is verified and supported by the affidavit of its director and sole shareholder, Omar Said Suleiman, sworn on the same day and accompanied by documents in support.
2. The Company states that it scaled down its operations in March 2020 due to the Covid-19 crisis and due to cessation of movement in the country, it clients ceased operations. As a result, it was unable to meet its financial obligations as they fell due as it was not generating any income. It has produced a statement of account dated 30<sup>th</sup> September 2022 showing that it suffered a loss of Kshs 4,514,995.00. At the same time, its assets have a book value of Kshs 188,785,658.00 and an estimated realizable value of Kshs 139,785,970.00 while the total liabilities owed by the Company amount to Kshs 265,490,345.59.
3. The director states that the Company has explored all possibilities of reviving its business including seeking financing and injecting more capital but it has been unsuccessful. It further states that it is now insolvent and unable to pay its debts hence it is just and equitable to liquidate the Company.
4. The Company has various Creditors who have been served with the Petition and have given notice to appear at the hearing of the Petition. The Creditors include the following; Bima Manufacturing Limited, King Plastic Industries Limited, Broadway Petroleum Limited, First Community Bank, NCBA Bank Kenya PLC, Redavia Kenya Asset Limited, KCB Bank Kenya Limited, Kitui Flour Mills Kenya Limited, Pembe Flour Mills Limited, Road Runner Retread and Tyres Limited, Hass Petroleum (K) Limited, Edible Oil Products Limited, Unga Limited and Grain Industries.
5. When the Company filed the Petition, it also filed a Notice of Motion dated 22<sup>nd</sup> October 2022 seeking, inter alia, an order for stay of all legal proceedings against it on the ground that certain



creditors including the landlord had commenced recovery proceedings. On 7<sup>th</sup> November 2022, I granted the order of stay including an order restraining the landlord, Bima Manufacturers Limited, from proceeding with distress. The Landlord thereafter filed a Notice of Motion dated 1<sup>st</sup> December 2022 seeking to discharge the orders of stay or in the alternative, an order directing the Company to pay the rent arrears amounting to Kshs 4,819,448.00.

6. When the matter came up for directions today, 22<sup>nd</sup> December 2022, I indicated to the parties that having studied the material on record, it was apparent that the Company was insolvent and it would be in the interest of all the parties for the matter to be resolved as soon as possible in view of the deterioration of remaining assets and likelihood of escalation of costs and expenses which would diminish the value of the Company. All the Creditors present indicated that they were not opposed to the liquidation of the Company.
7. Section 424 of the Act provides the circumstances under which the court may liquidate a Company. It states, at the material part, as follows:

424. Circumstances in which company may be liquidated by the Court

- (1) 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) -----
  - (c) -----
  - (d) -----
  - (e) the company is unable to pay its debts;
  - (f) -----
  - (g) -----

8. Also relevant to this case is section 427(1) and (2) of the Act which sets out the powers of the court when presented with a liquidation petition as follows:

427. Powers of Court on hearing of liquidation application

- (1) On the hearing of a liquidation application, the Court may make such of the following orders as it considers appropriate:
  - (a) an order dismissing the application;
  - (b) an order adjourning the hearing, conditionally or unconditionally;
  - (c) an interim liquidation order; or
  - (d) any other order that, in its opinion, the circumstances of the case require.
- (2) However, the Court may not refuse to make a liquidation order on the ground only that the company's assets have been



mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(3) -----

(4) -----

9. I am satisfied that based on the material presented by the Company, its accounts and the demands by the Creditors, some of whom have issued Statutory Demands under section 384 of the *Insolvency Act, 2015*, the Company is insolvent and unable to pay its debt. I therefore hold that it is in the interest of the Company and its Creditors to liquidate the Company.
10. As regard the issues between the Company and its Landlord, I hold that the Liquidator appointed would be in a position to deal with it and come to a conclusion of the matter. Since the proposed Liquidator is available at the end of January 2023, I will accommodate the request regarding commencement of the liquidation.
11. For reasons I have set out above, I now make the following orders:
  - a. A Liquidation order be and is hereby issued against the Company, Royal Swiss Bakery Limited.
  - b. Orlando Mario Da Costa-luis (IP No. 014) is appointed as the Interim Liquidator of the Company.
  - c. The Liquidation order is suspended until 30th January 2023 and shall take effect on 31st January 2023.
  - d. Upon taking office the Liquidator is directed to engage the Landlord with a view to resolving any issues.
  - e. In the meantime, the interim orders in force shall remain pending further orders of this court.
  - f. Mention on 17th February 2023 for further directions. Notice to issue.

**DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF DECEMBER 2022.**

**D. S. MAJANJA**

**JUDGE**

Court Assistant: Mr. Jagongo.

