



**In re Thika Road Gym Limited (Insolvency Petition E018 of 2024)
[2025] KEHC 363 (KLR) (Commercial and Tax) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 363 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E018 OF 2024
PM MULWA, J
JANUARY 23, 2025
IN THE MATTER OF THIKA ROAD GYM LIMITED
AND
IN THE MATTER OF THE INSOLVENCY ACT (CAP. 53 OF LAWS OF KENYA)**

JUDGMENT

Introduction and background

1. By a Petition dated 29th June 2022, Thika Road Gym Limited (hereinafter Thika Road Gym) stated that it is a company that was incorporated on 8th September 2015 as Balearic Investments Limited and subsequently changed its name to Thika Road Gym. It contends that it has a nominal capital of Kshs. 100,000.00 divided into 1,000 shares of Kshs. 100.00 each and that the amount of the capital paid up or credited as paid up is Kshs. 100,000.00. The objects for which Thika Road Gym was established are as follows:

‘To acquire, establish or carry on the business and trade of exporters and importers, general manufacturers, retail and wholesale traders, contractors, general merchants, general traders and commissions agents in Kenya or elsewhere in the world of all kinds of merchandise, products, goods, articles, including without limitation, foods, commodities, agricultural goods, dairy produce, household goods, toiletry, fabrics, furnishings, jewellery, perfumes, stationery, gift items, toys, manufactured goods, building materials and builders’ requisites, machinery, electrical and engineering goods and goods and merchandise of all types and kinds whether manufactured from artificial or natural substances and to carry on any business incidental to the aforementioned businesses.’

2. Thika Road Gym claims that it ceased trading and has not been in operation since March 2020 owing to the outbreak of the COVID-19 pandemic and as such, it has not been generating any income and it is insolvent and unable to pay its debts. It claims to be indebted to its various creditors in the aggregate sum of Kshs. 104,677,348.41 broken down as follows:



- a. TRM Holdings Limited - Kshs. 39,248,982.94
 - b. Daluga Investment Inc – Kshs. 38,449,462.10
 - c. Jupiter SC Management - Kshs. 9,471,400.00
 - d. Dry Construction Ltd - Kshs. 7,176,689.04
 - e. James Holden - Kshs. 4,325,309.20
 - f. Odex Cleaning Equipment - Kshs. 1,737,509.00
 - g. Bosch East Africa Limited - Kshs. 1,469,345.61
 - h. Glacier East Africa - Kshs. 1,365,718.96
 - i. Top Gym - Kshs. 616,214.48
 - j. Nairobi Sports House Limited - Kshs. 328,308.08
 - k. Diplomatic Protective Services - Kshs. 260,120.00
 - l. Ashwin Brothers Accounting/Russel Accountants Russel Bedford Alexander & Associates - Kshs. 228,289.00
3. Thika Road Gym states that by a special resolution dated 29th June 2022 it resolved that it be liquidated by the Court and urged that the Court has jurisdiction under Section 423 of the Insolvency Act to supervise the liquidation. It therefore prays that it be liquidated and the court to appoint the Official Receiver as the Provisional Liquidator. The Creditors; TRM Holdings Limited, Daluga Investment Inc., Jupiter SC Management and James Holden support the Petition for liquidation, however they state that Thika Road Gym has failed to demonstrate that it is unable to pay its debts and that, it has further failed to state with certainty the assets in its possession and which, if available, will be sold off to settle existing claims.
 4. The Creditors state that in the likely event that the court finds the liquidation petition merited, they should then be included in the payment plan at the opportune time and be allowed to present their claims during the liquidation process, if at all. They further state that a ruling of the court dated 4th November 2022 allowed TRM Holdings to sell Thika Road Gym’s equipment which constituted the only assets owned by Thika Road Gym. After the sale, the entire liquidation petition was rendered academic and deprived the other creditors the right to ever recover their debts. These other creditors aver that in as much as they support the petition, they should have their interests as creditors in the matter noted in the decision of the court

Analysis and determination

5. Under Section 424 of the *Insolvency Act*, a company may be liquidated by the Court if the company has by a special resolution resolved that it be so liquidated and is unable to pay its debts. Section 384 (2) thereof provides that “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. Having gone through the Petition, the submissions and documents on record, it is undeniable that Thika Road Gym is insolvent and unable to pay its debts. From the statement on Thika Road Gym’s financial position, its liabilities outweigh its assets, which have since been sold by TRM Holdings. It is impossible for the company to survive any order other than that of liquidation.



7. As to whether the other creditors other than TRM Holdings will be able realize their debts and whether there are any other assets available for the same, I believe that the appointed Liquidator would be in a position to deal. Under Section 444 of the *Insolvency Act*, once a liquidation order is made, the provisional liquidator or liquidator assumes control of all the property to which the company is or appears to be entitled. The creditors will therefore be able to lay out their interests and issues before the liquidator on all matters pertaining to the liquidation process.
8. In any event, the court shall not refuse to make a winding-up order on the ground only that the company has no assets (see *Kenya Artisans Limited v Chemical & Allied Workers Union* [2021] KEHC 4149 (KLR)).

Conclusion and disposition

9. In the foregoing, the Court issues the following orders:
 1. A Liquidation order be and is hereby issued against the Company, Thika Road Gym Limited.
 2. The Official Receiver is appointed as the Provisional Liquidator of the Company.
 3. The costs of these proceedings shall be costs in the liquidation of the Company.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF JANUARY 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Nyaburi for Petitioner

Mr. Oduor for 1st – 3rd Creditors

Ms. Akongo for TRM Holdings (Creditor)

Ms. Gichangi for Dry Construction Ltd (Creditor)

Court Assistant: Carlos

