



**Kiarie v Gifted Hands Schools Limited (Insolvency Petition E169 of 2019)
[2025] KEHC 390 (KLR) (Commercial & Admiralty) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 390 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
INSOLVENCY PETITION E169 OF 2019**

PM MULWA, J

JANUARY 23, 2025

BETWEEN

JOHN MAINA KIARIE PETITIONER

AND

GIFTED HANDS SCHOOLS LIMITED RESPONDENT

JUDGMENT

1. By a petition dated 3rd June 2019, John Maina Kiarie (the Petitioner) sought from the Court a liquidation order against Gifted Hands Schools Limited (the Respondent).
2. The Petitioner avers that the Respondent is indebted to the tune of Kshs. 5,991,770.85, plus costs and interest, on account of unpaid rent, as ordered by the Business Premises Rent Tribunal (BPRT) on 20th November 2017. That despite being served with a statutory demand, the Respondent has failed, refused, and/or neglected to make the payment. As such, the Respondent is unable to pay its debts.
3. The Petitioner seeks the following reliefs:
 - a. That the company be liquidated under the provisions of the *Insolvency Act*, 2015;
 - b. That the Court appoint the Official Receiver as the provisional liquidator;
 - c. That the costs of this petition be awarded to the Petitioner and paid out of the company's assets; and
 - d. Such other orders as the Court may deem fit to grant in the circumstances.
4. The petition is supported by an affidavit of the Petitioner sworn on 3rd June 2019.



5. The Respondent filed an answer to the petition dated 21st October 2022, and denies the allegations set forth in the petition. The Respondent avers that the petition is premature due to the Petitioner's failure to exhaust all alternative recovery mechanisms before resorting to adverse action. The Respondent urged the Court to dismiss the petition with costs, citing its alleged incompetence and lack of merit.
6. The petition was heard orally and thereafter parties filed written submissions which I have considered. The key issue for consideration is whether the court should declare the Respondent insolvent and place it under liquidation.
7. According to the Petitioner, the Respondent is unable to pay its debts and is insolvent. Section 384 (2) of the *Insolvency Act*, 2014 offers a definition of the expression 'unable to pay debts', thus:

“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).”
8. Section 424(e) of the *Insolvency Act* stipulates the circumstances under which a Court may order the liquidation of a company, including instances where the company is unable to pay its debts.
9. Having reviewed the evidence presented, I am satisfied that the Petitioner has established a prima facie case against the Respondent. By a tenancy agreement dated 1st May 2014, the Petitioner leased a property to the Respondent. Over time, the Respondent defaulted on rent payments, leading the Petitioner to seek their eviction.
10. In response, the Respondent initiated proceedings before the BPRT in Tribunal Case No. 426 of 2017. In its ruling dated 20th November 2017, the Tribunal ordered the Respondent to pay rent arrears amounting to Kshs. 5,991,770.00 along with costs of Kshs. 35,000.00. Despite repeated demands, the Respondent has failed to settle the outstanding amount.
11. The Respondent opposed this petition, citing the adverse financial impact of the COVID-19 pandemic as the primary cause of their inability to meet their obligations. However, this excuse is unpersuasive. The COVID-19 pandemic affected the country in 2020, whereas the debt accrued as far back as 2015, and the suit was filed in 2019, well before the pandemic began. Furthermore, despite the return to normalcy from the pandemic, the Respondent has made no payments towards the outstanding debt.
12. In light of these circumstances, it is clear that the Respondent has made any genuine effort to address their financial obligations.
13. Section 427 of the Act, outlines the Powers of the Court in the hearing of liquidation application. It provides as follows:

“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.



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."

Disposition

14. Applying the considerations discussed above to the facts of this case, I find that the Petitioner has met the threshold for the Court to grant the prayers sought. Accordingly, I allow the Petition and issue the following orders:
 - a. A Liquidation Order is hereby issued in respect of Gifted Hands Schools Limited.
 - b. The Official Receiver is hereby appointed as the Provisional Liquidator.
 - c. The costs of these proceedings shall be treated as 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:

Ms. Kache h/b for Mr. Oonge for Petitioner

Mr. Pala for Respondent

Court Assistant: Carlos

