



**Meduprof- SBV v Odhiambo (Insolvency Cause E028 of 2023)  
[2025] KEHC 63 (KLR) (Commercial and Tax) (9 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 63 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E028 OF 2023  
A MABEYA, J  
JANUARY 9, 2025**

**BETWEEN**

**MEDUPROF- SBV ..... PETITIONER**

**AND**

**DR. ALFRED OTIENO ODHIAMBO ..... RESPONDENT**

**RULING**

1. The Petitioner filed the liquidation petition dated 15/8/2023 seeking a bankruptcy order in respect of the estate of the Debtor, Dr. Alfred Otiemo Odhiambo. It was supported by the verifying affidavit sworn by its Managing Director, Williem Van Prooijen on 15/8/2023.
2. The Petitioner's case is that the Debtor has been residing in Nairobi the year preceding the filing of the Petition. On 17/10/2017, the Court entered judgment against the Debtor in Misc. Appl. No. 302 of 2017 accordance with the Arbitral Award dated 15/2/2017 which had been filed for recognition and enforcement.
3. That the Debtor was ordered to pay Two Hundred Thousand Euros (Euro 200,000) less a discount of Twenty Thousand Euros (Euro 20,000) being the consideration under the share sale and purchase agreement dated 18/2/2016. The amount owing continued to accrue monthly interest and as at the time of issuing the statutory demand, the same was Five Hundred and Ten Thousand Three Hundred and Twenty Euros (510,320) made up of the decretal amount, interest and costs.
4. The Petitioner also contends that neither the Petitioner nor any person on the Petitioner's behalf holds any security on the Debtor's estate for payment of the said sum; that the amount owed by the Debtor is within the prescribed bankruptcy level and in accordance with the *Insolvency Act* and *Rules*; that the Debtor has no reasonable prospect of paying the debt; that twenty-one (21) days have elapsed since



the statutory demand was served upon the Petitioner and that the Debtor has neither complied nor sought to set it aside.

5. The Debtor opposed the Petition vide a replying affidavit sworn on 20/6/2024. His case is that the Petition is incompetent, devoid of merit from which no reasonable Ruling for orders sought can be issued. He faulted the Petitioner for failing to serve him with a statutory demand before filing the Petition as required under the Insolvency Regulations.
6. He contended that the Petition has been made in bad faith and abuse of the Court process. That the Petitioner has not satisfied the legal threshold for the orders sought. That the grant of the orders sought will affect his proprietary rights, greatly prejudicing him and negatively affecting his business and dealings as an innocent party without any liability.
7. The Petition was canvassed through written submissions dated 18/7/2024 and 30/8/2024, respectively.
8. I have considered the Petition, the response, the parties' respective submissions and the authorities cited. The issue for determination is whether the Petitioner has met the threshold for the grant of a bankruptcy order in respect of the Debtor's estate.
9. Section 17 of the *Insolvency Act* provides that:-

- “(1) One or more creditors of a debtor may make an application to the Court for a bankruptcy order to be made in respect of the debtor in relation to a debt or debts owed by the debtor to the creditor or creditors.
- (2) Such an application may be made in relation to a debt or debts owed by the debtor only if, at the time the application is made: -
  - (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the prescribed bankruptcy level;
  - (b) the debt, or each of the debts, is for a liquidated amount payable to the applicant creditor, or one or more of the applicant creditors, either immediately or at some certain, future time, and is unsecured;
  - (c) the debt, or each of the debts, is a debt that the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay; and
  - (d) there is no outstanding application to set aside a statutory demand in respect of the debt or any of the debts.
- (3) For the purposes of subsection (2)(c), a debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—
  - (a) the applicant creditor to whom the debt is owed has served on the debtor a demand requiring the debtor to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least twenty—one days have elapsed since the demand was served, and the demand has been neither complied with nor set aside in accordance with the insolvency regulations; or



- (b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the applicant, or one or more of the applicants to whom the debt is owed, has been returned unsatisfied either wholly or in part.
- (4) For the purposes of subsection (2)(c), a debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and: -
- (a) the applicant to whom it is owed has served on the debtor a demand requiring the debtor to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due;
  - (b) at least twenty—one days have elapsed since the demand was served; and
  - (c) the demand has been neither complied with nor set aside in accordance with the insolvency regulations.
- (5) This section is subject to sections 18 to 20.
- (6) An overstatement in a statutory demand of the amount owing by the debtor does not invalidate the demand unless—
- (a) the debtor notifies the creditor that the debtor disputes the validity of the demand because it overstates the amount owing; and
  - (b) the debtor makes that notification within the period specified in the demand for the debtor to comply with it.
- (7) A debtor complies with a demand that overstates the amount owing by—
- (a) taking steps that would have complied with the demand had it stated the correct amount owing, such as by paying the creditor the correct amount owing plus costs; and
  - (b) taking those steps within the period specified in the demand for the debtor to comply.”

10. The Debtor contended that the Petitioner failed to serve him with a statutory demand before filing the petition as required under the Insolvency Regulations. However, from the record, the Petitioner produced an affidavit of service sworn by Robert K. Mutuku on 18/7/2023. He deposed that he received the statutory demand notice dated 30/6/2023 from the Petitioner’s advocates and that he served it upon the Debtor on 13/7/2023 at his clinic, DAMIC (Dental and Maxillofacial Imaging Centre) Upper Hill Branch at around 3.06 pm. He also deposed that Dr. Odhiambo accepted the notice by retaining a copy and acknowledged the same by signing and dating on the original which was annexed.

11. The other issues raised by the debtor have no basis. The orders sought are in accordance with the law. A process of execution of a lawful Court order cannot be termed as interfering with a debtor’s proprietary rights.



12. I have considered the record and I am satisfied that the Creditor has satisfied the requirements specified in section 17 of the [Insolvency Act](#) and there is no substantive reason not to adjudge the debtor bankrupt.

13. Section 25 of the [Insolvency Act](#) provides that:-

- “(1) The Court may make a bankruptcy order in respect of the debtor if the creditor has complied with section 7.
- (2) The Court may refuse to adjudge a debtor bankrupt if—
- (a) the applicant creditor has not satisfied the requirements specified in section 17;
  - (b) the debtor is able to pay the debtor’s debts; or
  - (c) it is just and equitable that the Court should not make a bankruptcy order.”

14. Accordingly, Dr. Alfred Otieno Odhiambo, the Debtor herein is adjudged bankrupt as he is unable to pay his debts. Costs of the Petition are awarded to the Petitioner.

It is so ordered.

**SIGNED AT NAIROBI THIS 9<sup>TH</sup> DAY OF JANUARY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JANUARY, 2025.**

**F. GIKONYO**

**JUDGE**

