



**In re Belladonna Pharmacy Limited (Insolvency Petition E016 of 2022)
[2025] KEHC 1764 (KLR) (Commercial and Tax) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E016 OF 2022**

JWW MONG'ARE, J

FEBRUARY 20, 2025

THE MATTER OF BELLADONNA PHARMACY LIMITED

AND

IN THE MATTER OF THE INSOLVENCY ACT(CAP 53 - LAWS OF KENYA)

BETWEEN

BELLADONNA PHARMACY LIMITED PETITIONER

AND

BELMONT PHARMACEUTICAL LIMITED 1ST RESPONDENT

FORLEYS LIMITED 2ND RESPONDENT

LABOREX KENYA LIMITED 3RD RESPONDENT

JUDGMENT

Introduction & Background

1. The Petitioner (“Belladonna”) was incorporated on 10th of January 1994 with a Nominal Capital of KShs.2,000,000.00/= divided into 2,000 shares of KShs.100/= each. Belladonna carries on the business of chemists, druggists, dry-salters, oil and colour men importers and manufacturers and other objects set forth in its Memorandum of Association of the company with its registered office being L.R 91/418 Shop 17, Village Market, Nairobi.
2. Belladonna has now filed the Petition dated 6th June 2022 seeking to be liquidated by the court under section 424(1)(g) of the *Insolvency Act* (Chapter 53 of the Laws of Kenya) and that the court appoints a liquidator for purposes of winding up its affairs. The Petition is supported by the grounds on its face and the affidavits of Belladonna’s Director, Martin Ogang, sworn on 6th June 2022 and 20th



November 2023. The Petition is opposed by the Respondents who are Creditors of Belladonna as follows; The 2nd Respondent(“FORLEYS”) relies on the Notice and Grounds of Opposition dated 27th June 2022, the affidavits filed in opposition for stay dated 6th June 2022 and the ruling of the court on that application dated 16th October 2023 (“the Ruling”). The 3rd Respondent(“LABOREX”) relies on the replying affidavit sworn on 17th July 2024 by its debt collector, Edwin Nguta and the Notice and Grounds of Opposition dated 7th November 2022.

3. The court directed that the petition be canvassed by way of written submissions which are on record and which together with the pleadings, I have considered carefully and will make relevant references to in my analysis and determination below.

Analysis and Determination

4. Under section 424(1)(g) of the *Insolvency Act* that has been relied on by Belladonna, a company may be liquidated by the Court if the Court is of the opinion that it is just and equitable that the company should be liquidated. Belladonna has also relied on section 424 (1)(a) which provides that an application for liquidation may be made by either a company or its directors. It has also stated that it is unable to pay its debts which under section 424(1)(e) is also a ground or circumstance in which a company may be liquidated by the court. When the court rendered the Ruling, it was noted that Belladonna had not provided information as what has caused its current state of its affairs leading to a situation where it is no longer able to meet its financial obligations. It was also noted that there was material nondisclosure by Belladonna as to the goods supplied to it by its creditors, Laborex and Forleys and the fact that the debts owed to them were not disclosed in the petition. Further, that the allegation that Belladonna has been fraudulently siphoning out its profits to purchase a property in the name of the directors had not been controverted.
5. Whereas Belladonna has filed a further affidavit in an attempt to explain its financial position and the allegations raised by the Creditors, I find that no new material has been presented by Belladonna for the court to change its position. Belladonna is still relying on the same financial statements that the court found insufficient to explain its current financial affairs and that its explanations as to its expenditure remain threadbare and without proof. If anything, its expenditure as per the financial statements paint a picture of an entity that is reckless and/or extravagant in its spending, choosing to spend a whopping Kshs.30,437,632.00/= in the year 2020 on “Administrative Expenses” as opposed to paying off or reducing its liabilities which is what financial prudence and austerity in difficult financial times would require. I am of the view that Belladonna’s financial statements do not demonstrate inability to pay its debts but rather demonstrates that it is trying to avoid satisfying the Respondent’s lawful claims by filing this petition. As such, it is not difficult for the court to conclude that this petition has been filed in bad faith (see *Sunus (Baby & Children Wear) Limited v Riverland Limited & 2 others* [2024] KEHC 2279 (KLR))

Conclusion and Disposition

6. In the foregoing, I find that the petition dated 6th June 2022 is not merited and the same is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 20TH DAY OF FEBRUARY 2025

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J.W.W. MONGARE
JUDGE



In The Presence Of:-

1. Mr. Jaketch for the Petitioner.
2. N/A for the 1st Respondent-Belmont.
3. Ms. Nkatha for the 2nd Respondent -Laborex
4. N/A for Creditor- 3rd Respondent- Forleys.
5. Amos - Court Assistant

