



**KTK Advocates v Nyambane Coffee Mills Limited (Insolvency Petition E067 of 2023)
[2025] KEHC 3238 (KLR) (Commercial and Tax) (3 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 3238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E067 OF 2023
CJ KENDAGOR, J
FEBRUARY 3, 2025**

BETWEEN

KTK ADVOCATES PETITIONER

AND

NYAMBANE COFFEE MILLS LIMITED RESPONDENT

JUDGMENT

1. The Petitioner/Creditor filed an Insolvency Petition dated 18th October, 2023 against the Respondent/ Debtor seeking the following orders: –
 - i. That the Court makes an order for the liquidation of Nyambane Coffee Mills Limited;
 - ii. That the Honourable Court makes such order as may be necessary and just in the premises;
 - iii. That the costs of this petition together with the sum of Kshs. 3,912,482.75/= together with interest at Court rates from 3rd February, 2022 be provided to the petitioner out of the assets of the company on priority.
2. The Petition is supported by an affidavit sworn by Donald B. Kipkorir sworn on 20th September, 2024 annexing documents which are Ruling dated 26th May, 2020 in Nairobi High Court Commercial and Tax Division Misc. Application no. 285 of 2015, Certificate of Taxation dated 3rd May 2021 and Ruling dated 21st December, 2021.
3. The Petitioner’s case is that the Respondent is indebted to them out of a Judgment relating to the Advocate/Client Bill of Costs that was certified in High Court Commercial Misc. Application No. 298 of 2015. Judgment was entered therein on 21st December, 2021 for the sum of Kshs.3,902,482.75/= plus interest at 14% p.a. from 26th May, 2020 until payment in full.



4. The Debtor/Respondent was served with the petition and an affidavit of service sworn on 22nd November, 2023. Despite service, they did not enter an appearance nor file a response to the petition. Affidavits of service were filed for all the Court attendances. The petition was canvassed by way of written submissions. The Creditor's submissions were filed on 11th October 2024, and they referred the Court to a Court of Appeal decision in the case of *Pride Inn Hotels and Investments Limited v Tropicana Hotels Limited* (2018) eKLR.
5. I have reviewed the petition, the supporting affidavit, and the Petitioner's submissions. The issue for determination is whether the company ought to be liquidated and what orders the Court should issue concerning the case.
6. The instances under which a Company may be liquidated by the Court are provided for under of Section 424(1) the *Insolvency Act*, 2015 which provides that –

“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. being a public company that was registered as such on its original incorporation –
 - i. the company has not been issued with a trading certificate under the *Companies Act* (Cap. 486); and
 - ii. more than twelve months has elapsed since it was so registered;
 - c. the company does not commence its business within twelve months from its incorporation or suspends its business for a whole year;
 - d. except in the case of a private company limited by shares or by guarantee, the number of members is reduced below two;
 - e. the company is unable to pay its debts;
 - f. at the time at which a moratorium for the company ends under Section 645 - a voluntary arrangement made under part IX does not have effect in relation to the company; or
 - g. the Court is of the opinion that it is just and equitable that the company should be liquidated.” (emphasis added).”
7. The Petitioner is seeking an order for liquidation to be made against the Respondent on the grounds that the latter is unable to pay its debts.
 8. Section 384 of the *Insolvency Act* 2015 provides the circumstances in which a company may be deemed as being unable to pay its debts in the following words:

“(1) For the purposes of this Part, a company is unable to pay its debts-

- a. if a creditor (by assignment or otherwise) to whom the company is indebted for hundred thousand shillings or more has served on the company, by leaving it at the company's registered office, a written demand requiring the company to pay the debt and



the company has for twenty-one days afterwards failed to pay the debt or to secure or compound for it to the reasonable satisfaction of the creditor;

- b. if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- c. if it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due.

(2) 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).

(3) The insolvency regulations may increase or reduce the amount specified in subsection (1) (a).”

9. The Creditor possesses a valid decree against the Debtor, which remains unsatisfied. The ruling that entered judgment on the certificate of costs and the verdict on taxation show that the Debtor participated in the proceedings that resulted in them. The taxation ruling was issued on 26th May, 2020 and there is no stay of the decree that was issued. In the supporting affidavit, the petitioner maintains that they have been unable to identify attachable assets belonging to the debtor.
10. The Debtor was served with a statutory demand notice dated 20th September 2023; however, he has not complied with the demand nor shown any willingness or ability to pay the debt in question.
11. I am therefore persuaded that the Creditor has satisfied the prerequisites set out under Section 17 of the *Insolvency Act* 2015, reproduced earlier in this ruling. Further, I find that there is sufficient evidence that the Debtor is unable to pay his debts. I do not see any compelling reason to decline making a bankruptcy order against him.
12. The upshot is that the petition dated 18th October, 2023 is merited. It is allowed in the following terms:
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 - i. That Nyambene Coffee Mills Limited is declared insolvent and is hereby liquidated under the provisions of Section 424(1)(e) of the *Insolvency Act* 2015.
 - ii. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed as the Liquidator of the respondent's properties and
 - iii. Costs of the petition are awarded to the petitioner and shall also be borne out of the respondent's assets.
13. It is so ordered.

DATED, DELIVERED AND DATED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 3RD DAY OF FEBRUARY, 2025.

C. KENDAGOR

JUDGE

In the presence of:-

Court Assistant: Beryl



Mr. Simiyu, Advocate for the Petitioner

