



**In re Blue Nile (East Africa) Limited (Insolvency Petition E039 of 2020)
[2025] KEHC 3631 (KLR) (Commercial and Tax) (14 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3631 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E039 OF 2020**

MN MWANGI, J

MARCH 14, 2025

IN THE MATTER OF THE INSOLVENCY ACT, 2015

-AND-

IN THE MATTER OF BLUE NILE (EAST AFRICA) LIMITED

BETWEEN

APEX STEEL LIMITED PETITIONER

AND

BLUE NILE (EAST AFRICA) LIMITED AFFECTED COMPANY

JUDGMENT

1. Before me is a Liquidation Petition dated 16th December 2020 filed by the petitioner against the Company seeking orders that Blue Nile (East Africa) Limited be liquidated by this Court under the provisions of the *Insolvency Act*, 2015, and that the costs of the petition be provided to the petitioner out of the Company's assets in priority.
2. The petition is premised on the grounds on the face of the petition, and it is supported by a verifying affidavit sworn on the same day by Mr. Kush Nathwani, the petitioner's Executive Director. The petitioner's case is that sometime between May and July 2016, it sold and delivered goods on credit to Blue Nile (East Africa) Limited (the Company) in Nairobi, with payment being due within thirty (30) days. It is contended that despite receiving invoices and a statement of account, the Company failed to pay the outstanding amount of Kshs 12,317,414.70.
3. Mr. Nathwani averred that at a meeting held on 31st May 2019, the Company's CEO reaffirmed their commitment to settling the debt, which was followed by a letter dated 14th June 2019 reiterating the



said promise, but to date no payment has been made. As a result, on 24th June 2020, the petitioner formally demanded payment from the Company to be made within 21 days, but it failed to meet the said demand. Mr. Nathwani asserted that the Company is insolvent and unable to pay its debts, hence it is just and equitable that it be liquidated.

4. In opposition to the petition, the Company filed a replying affidavit sworn on 25th May 2021 by Ms Lidia Gode Yussuf, a Director of the Company. She acknowledged the Company's debt of Kshs 12,317,414.70 to the petitioner but averred that the Company remains solvent despite facing liquidity challenges due to unpaid debts from its customers, especially from government-related projects. She stated that it is owed over Kshs 515,976,883.58, far exceeding its total liabilities of Kshs 290,516,457.85, leaving it with a positive operational value of Kshs 225,460,425.73.
5. Ms Yusuf deposed that the Company has sought Court protection vide HCCOMM Misc. App. No E786 of 2020 to manage creditor claims and recovery of outstanding debts. She proposed a structured repayment plan instead of liquidation, stating that dissolution would harm employees, creditors, and the business ecosystem. She emphasized that the Company is committed to settling all its debts once it regains liquidity. She requested for time for the Company to recover funds from its debtors.
6. This petition proceeded by way of affidavit evidence, and was canvassed by way of written submissions. The petitioner's submissions were filed on 9th December 2024. From the Court record and the CTS, by the time I retired to write this judgment, the Company had not filed its written submissions.
7. Mr. Ondieki, learned Counsel for the petitioner cited the provisions of Sections 384 & 424 of the *Insolvency Act*, 2015 and submitted that the Company owes the petitioner Kshs 12,317,414.70, exceeding the statutory threshold. He relied on the case of *In re Sucasa at Mombasa Road Limited* [2019] eKLR, and further submitted that the petitioner served the Company with a written demand on 24th June 2020 at its registered office, which the Company has neither paid nor challenged, indicating the debt is undisputed.
8. He referred to the Court of Appeal case of *Prideinn Hotels & Investments Limited v Tropicana Hotels Limited* [2018] eKLR, and argued that liquidation should not be a last resort after other settlement options are exhausted. He submitted that while the Company opposes liquidation on the ground that it would allow its debtors to benefit from unpaid materials, a Court-appointed liquidator has the authority under Section 443 of the *Insolvency Act* to recover the Company's assets, including debts owed.

Analysis And Determination.

9. I have considered the instant petition, the affidavit filed in support thereof, the replying affidavit by the Company and the written submissions by Counsel for the petitioner. The issue that arises for determination is whether a liquidation order should issue against the Company.
10. In this case, the petitioner relies on the provisions of Section 424(1)(e) in urging this Court to liquidate the Company. Section 424(1) of the *Insolvency Act*, 2015 provides for circumstances under which a Company may be liquidated by a Court. It states 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).
11. Section 384 of the *Insolvency Act*, 2015 provides for instances under which a Company may be deemed unable to pay its debts. It provides as follows -
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). (Emphasis added).
12. It is not in contest that between May and July 2016, the petitioner sold and delivered goods on credit to Blue Nile (East Africa) Limited in Nairobi, with payment being due within thirty (30) days, but despite having received invoices, the Company has failed to pay the outstanding amount of Kshs 12,317,414.70 to date. It is further not disputed that the petitioner vide a letter dated 23rd June 2020 which was served upon the Company at its registered offices on 24th June 2020 demanded for payment of the aforesaid sum to be made within twenty-one (21) days, but the Company failed to meet the said demand.
13. In opposing this petition, the Company asserted that it remains solvent despite facing liquidity challenges due to unpaid debts from its customers, especially from government-related projects. It claimed that it is owed over Kshs 515,976,883.58, far exceeding its total liabilities of Kshs 290,516,457.85, leaving it with a positive operational value of Kshs 225,460,425.73. The petitioner averred that it has since obtained Court protection vide HCCOMM MISC. APP. No E786 of 2020 so as to manage creditor claims and to enable recovery outstanding debts.



14. On perusal of the order granted by the Court in HCCOMM MISC. APP. No E786 of 2020, it is evident that it did not bar any of the Company's creditors from pursuing liquidation proceedings against it. The said order only directed that a notice convening a meeting be issued to the Company's creditors for them to discuss and agree on arrangements and compromises related to money owed to them by the Company and its Directors. I note that despite the fact that the said order was issued on 22nd July 2020, the Company has neither alleged nor adduced any evidence to demonstrate whether the said meeting was ever convened and if so, whether there have been any agreements or compromises in relation to money owed to the Company's creditors by the Company and its Directors
15. I further note that the instant petition was filed in the year 2020 and the Company filed its response to the petition in May 2021 indicating that it is owed over Kshs 515,976,883.58, exceeding its total liabilities of Kshs 290,516,457.85, leaving it with a positive operational value of Kshs 225,460,425.73. The Company proposed to get into a structured repayment plan with the petitioner instead of liquidation.
16. Despite the said proposal, approximately four (4) years later, the Company has neither alleged nor demonstrated whether its debtors have paid it, and if so, how much has been paid. It has also not provided the proposed structured repayment plan for consideration by the petitioner, its creditors and this Court. I am alive to the fact that during the pendency of this petition, three (3) more of the Company's creditors by the name, Prime Steel Mills Limited, Abyssinia Iron and Steel Limited and Western Steel Mills Limited expressed their intention to appear in this petition to support it, but there has been no indication by the Company as to whether or not the said creditors' debts have been settled.
17. In the Court of Appeal case of *Prideinn Hotels & Investments Limited v Tropicana Hotels Limited* [2018] eKLR, Visram JA., reading the majority judgment of the Court, stated as follows –

This was clearly the case herein since the appellant did not make any payments after being served with a notice of demand by the respondent. Hence the respondent was entitled to bring a petition for liquidation of the appellant on the ground of its inability to pay its debt. Equally, I find no fault on the part of the learned Judge for issuing the liquidation order. There is no requirement under the *Insolvency Act* or the *Companies Act*, which stipulates that liquidation of a company should be as a last resort. Liquidation is one of the options under the *Insolvency Act* which a creditor such as the respondent in the case, could pursue to secure payment of a debt, especially a debt that remains unpaid for several years and in respect of which the appellant has been given adequate time, opportunity and indulgence. (Emphasis added).
18. From the evidence adduced, I am persuaded that the petitioner has discharged its burden of demonstrating that the Company is unable to pay the debt it owes the petitioner herein, and the Company is therefore insolvent.
19. In the result, I find that the petition herein is merited. It is allowed in the following terms -
 - i. That Blue Nile (East Africa) Limited is hereby declared insolvent and it is liquidated under the provisions of the *Insolvency Act*;
 - ii. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed as the Liquidator of the Company's properties; and
 - iii. Costs of the petition shall be borne out of the Company's assets.

It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY of MARCH 2025.

Judgment delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the Presence of:

Mr. Michael Muriithi with Mr. Lewson Ondieki for the Petitioner

No appearance for the respondent

Ms B. Wokabi – Court Assistant.

NJOKI MWANGI, J

