



REPUBLIC OF KENYA



**Kopo Kopo Inc v Nomad Energy Limited (Insolvency Petition E010 of 2020)  
[2025] KEHC 3067 (KLR) (Commercial and Tax) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3067 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY PETITION E010 OF 2020**

**MA OTIENO, J  
MARCH 6, 2025**

**BETWEEN**

**KOPO KOPO INC ..... PETITIONER**

**AND**

**NOMAD ENERGY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The petitioner filed a liquidation petition against the respondent dated 2/11/2020 pursuant to section 425 of the *Insolvency Act*.
2. The petitioner's case is that the company/respondent took out a loan of Kshs 3,000,000 from it on 28/11/2019 and agreed to repay the petitioner Kshs 4,255,558.00 in installments, with the last installment falling due on 26/5/2020.
3. The petitioner stated that the company only repaid a sum of Kshs.272,620 and left an outstanding debt of Kshs.3,982,938 and that the petitioner does not hold any security on the company's assets for the payment of the debt amount.
4. Further, the petitioner stated that it issued a demand letter to the respondent on 29/1/2020 and served a statutory demand dated 19/8/2020 for the payment of the debt, however, the respondent still failed to pay the debt and did not file any application to set aside the statutory demand before the court.
5. The petitioner asserted that the company is insolvent and unable to pay its debt and that the debt owed to the petitioner by the company/respondent is within the prescribed insolvency level in accordance with the *Insolvency Act* 2015.



6. Based on the foregoing, the petitioner prayed for the following orders:
- “ 1. 1. A declaration that the company is insolvent.
2. The company be liquidated by an order of the court under the provisions of the *Insolvency Act* 2015.
3. The court appoint the Official Receiver who is an authorised Insolvency Practitioner as the Provisional Liquidator.
4. That the costs of the application and Kshs.3,982,938.00 debt be provided to the petitioner out of the assets of the company in priority; and
5. Such other order that the court shall deem just in the circumstances.”
7. The petition was supported by an affidavit sworn on 10/11/2023 by Grace Nyambura, the petitioner’s head of credit.
8. In her affidavit, Ms. Nyambura averred that when this matter was mentioned before the court on 29/7/2021 the parties agreed to stay the proceedings on the agreement that the petitioner would deduct 2% from the sales of the respondent’s Lipa na M-Pesa Till in efforts to settle the outstanding debt from the 29/7/2021 until payment in full and that the matter was consequently adjourned for 2 months with the expectation that the respondent would repay as per the agreed amount however the petitioner failed to do so.
9. It was averred that the terms of the consent were that the respondent would make payments in the sum of Kshs.700,000 by the 1/6/2022 however in breach of the agreement, the respondent only made payments in the sum of Kshs.203,002 and issued a cheque of Kshs.100,000 which was dishonoured due to insufficient funds.
10. Ms. Nyambura averred that the outstanding debt as at the time of the Petition was Kshs.3,595,551.86 and that there were no subsisting orders of stay by the court barring collection of the debt.
11. It was further Mr. Nyambura’s averment that the respondent company neglected to file any pleadings in opposition to the petition despite proof of service of the hearing notices and of the petition.
12. At the time of writing this judgment, none of the parties had filed written submissions on the petition.

**Analysis and determination:**

13. I have considered the petition, the affidavits in support, as well as the annexures thereto. The petition seeks to liquidate the company in line with the provisions of the *Insolvency Act*. Section 384(1) and (2) provide 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)."

14. Section 424(1) of the Act 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](#), 2015; 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.”

15. In line with Section 425 (1) (b) of the [Insolvency Act](#), the instant Petition has been filed by a qualified person, that is, Kopo Kopo Inc., a creditor of Nomad Energy Limited. That fact, of being a creditor, was not denied by the company, who did not file any response to the Petition.

16. It is clear from the foregoing that a creditor may apply for the liquidation of a company where the company is unable to pay its debts. These provisions ensure that creditors have legal avenues to seek redress when a company is insolvent, thereby promoting financial accountability and protecting the interests of creditors.

17. In this case, the petitioner issued a cash advance to the respondent in the sum of Kshs.3,000,000 pursuant to an agreement known as a ‘Sale and Purchase Terms Agreement’ which is produced as an annexure in the petitioner’s supporting affidavit.



18. It is undisputed that the respondent company was unable to adhere to the payment terms of the agreement. Consequently, the petitioner issued the respondent with a statutory demand dated 19/8/2020 (produced on page 6 of the supporting affidavit dated 10/11/2023). However, the respondent failed to repay the amount demanded thereto within 21 days, which led the petitioner to resort to filing this petition.
19. From the evidence contained in the affidavit in support of the Petition, it is clear that the that the company cannot meet its financial obligations. The petitioner indulged the respondent; however, the respondent company continued to default on the loan repayment and even issued a dishonored cheque, which is annexed on page 11 of the petitioner’s supporting affidavit.
20. In the case of re Hoggers Limited (In Administration) (Petition E003 of 2021) [2021] KEHC 117 (KLR) (Commercial and Tax) (7 October 2021) (Ruling), the court, when faced with a similar situation, stated as follows:

“The evidence contained in the supporting affidavit is overwhelming that the company cannot meet its financial obligations. A financial statement that was produced attests to that. I find and hold that the evidence warrants the appointment of an interim liquidator pending the determination of the liquidation petition. He shall be responsible for the preservation of the assets of the company which will be used for the repayment of the debts owed to all the creditors.”

### **Disposition**

21. Accordingly, the application herein is allowed, and the Court makes the following orders: -
  - i. A declaration be and is hereby issued that Nomad Energy Limited is insolvent and is placed under interim liquidator.
  - ii. The official government liquidator be and is hereby appointed as the liquidator to immediately take over the management of the company;
  - iii. That the costs of the application and Kshs.3,982,938.00 debt be provided to the petitioner out of the assets of the company;
22. It is so ordered.

**SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 6<sup>TH</sup> DAY OF MARCH 2025**

**ADO MOSES**

**JUDGE**

In the presence of:

Moses – Court Assistant

