



REPUBLIC OF KENYA



KENYA LAW
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**Obuya v Banda Homes Limited (Insolvency Petition E044 of 2021)
[2025] KEHC 3285 (KLR) (Commercial and Tax) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E044 OF 2021
PM MULWA, J
MARCH 13, 2025
IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015
IN THE MATTER OF CREDITORS WINDING UP OF BANDA HOMES LIMITED**

BETWEEN

SUSAN OBUYA PETITIONER

AND

BANDA HOMES LIMITED RESPONDENT

JUDGMENT

1. The Petitioner Susan Obuya, a creditor, filed an insolvency petition dated 13th May 2021 under Section 425 of the *Insolvency Act*, seeking the following orders:
 - a. That Banda Homes Limited be liquidated under the provisions of the *Insolvency Act*, 2015
 - b. That this Honourable court appoints an Official Receiver as the liquidator.
 - c. That in the alternative, this court may make any other orders it deems fit;
 - d. That the costs of this petition be paid from the assets of Banda Homes Ltd.
2. The Petitioner avers that she entered into an agreement with Banda Homes Limited for the purchase of a maisonette (No. 48) to be developed on the property known as Land Reference Number 294/6-64, 68-69, (Red Oak Estate), for a sum of Kshs. 5,906,060.00. The contract stipulated that the maisonette would be delivered within 15 months. However, the Company defaulted, failing both to deliver the maisonette and to refund the sum of Kshs. 5,906,060.00 with interest at the rate of 14%. The Petitioner claims that the Company is unable to meet its debt obligations and that it is just and equitable for the company to be wound up.



3. I note that the company did not file any response to the petition. In support of the petition, 14 other creditors have filed affidavits, claiming that the company owes approximately Kshs. 24,567,692.00 and that, being unable to pay its debts, the company should be liquidated.
4. I have carefully considered the pleadings and submissions of the parties involved. The central issue for determination is whether Banda Homes Limited should be liquidated. The Petitioner's position is that the Company is unable to pay its debts.
5. Section 384(1) and (2) of the *Insolvency Act* outlines the circumstances in which a company is deemed to be unable to pay its debts. The Petitioner asserts that the Company was issued with a statutory demand on 13th April 2021, which it failed to honor.
6. Section 424 (1)(e) of the *Insolvency Act* empowers the Court to order the liquidation of a Company if it is unable to pay its debts.
7. The Court has jurisdiction to liquidate a Company in such circumstances, as provided for under Section 427(1) of the Act, which provides:

“(1) On the hearing of a liquidation application, the Court may make such of the following orders as it considers appropriate:

- a. an order dismissing the application;
- b. an order adjourning the hearing, conditionally or unconditionally;
- c. an interim liquidation order; or
- d. any other order that, in its opinion, the circumstances of the case require.”

8. The Petitioner issued a statutory demand in April 2021, which has remained unsatisfied to date. During this period, the Company has neither taken any action to satisfy the demand nor applied to have it set aside. Additionally, the Company has failed to provide evidence of any efforts made toward the repayment of the debt. No adequate explanation has been provided by the Company for its failure to settle the debt.
9. Given these circumstances, and being alive to the fact that liquidation is a draconian effect to any company, I find that the Petitioner has sufficiently demonstrated that the Company is unable to pay its debt, as required under Section 384(1) of the *Insolvency Act*. The Company has failed to show any indication that it is capable of generating the necessary funds to honor the debt.
10. The Court of Appeal in the case of *Pride Inn Hotels and Investment Limited v Tropicana Hotels Limited* (2018) eKLR had this to say:

“This was clearly a case where 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.”

11. The upshot is that in the interest of justice, I find that the Petition is merited and I allow the same in the following terms:

- i. Banda Homes be and is hereby liquidated under the provisions of Sections 424 (1) and 425 (1) (d) of the *Insolvency Act* No.18 of 2015.
- ii. The Official Receiver is hereby appointed the Liquidator of the company.
- iii. The costs of this petition to be paid out of the assets of the Company.

It is so decreed.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Mutunga h/b for Mr. Luseno for Petitioner

N/A Respondent

Mr. Njoroge, Mr. Kioko & Ms. Njeri for supporting creditors

Court Assistant: Carlos

