



REPUBLIC OF KENYA



Galana Oil Limited v Stewan General Trading Company Limited (Insolvency Petition E028 of 2023) [2025] KEHC 5596 (KLR) (Commercial and Tax) (2 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E028 OF 2023**

RC RUTTO, J

MAY 2, 2025

BETWEEN

GALANA OIL LIMITED PETITIONER

AND

STEWAN GENERAL TRADING COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Petitioner moved court by way of a Liquidation Petition dated 13th April 2023 seeking the following;
 - i. That the Court makes an order for the liquidation of the Company
 - ii. That the Court make such orders as may be necessary and just in the premises.
 - iii. That the costs of the Petition together with the sum of Kshs.1,171,323.05 plus interest at 14% from 27th April 2021 be provided to the Petitioner out of the assets of the Company in priority.
2. The petition is premised upon the grounds on the face of the petition as well as the verifying affidavit sworn on 13th April 2023 by Heather Kanana and supporting affidavit sworn on 18th October 2022 by Rachael N. Wachira, the Petitioner's Legal Counsel.
3. The Petitioner's case is that the Company is indebted to the Petitioner as per a valid court decree for the sum of Kshs.1,171,323.05 together with interest at 14% from 27th April 2021 being the amount due in respect of gas supplied, delivered and received by the company. That on 7th November 2022 the petitioner served a statutory demand on the company for the payment of the debt or any part of the debt or comply with the statutory demand.



4. Despite service of the Petition the respondent filed no response. The Petition thus proceeded for hearing ex parte.
5. The Petition was canvassed by way of written submissions dated 8th November 2024. The Petitioner set out the facts leading to filing of the petition and states that the respondent has refused to and/or failed to pay the Kshs.1,171,323.05 owed. It relied on sections 384(1)(a); 424(1)(e) and 425(1)(b) of the *Insolvency Act* of Kenya as well as the Court of Appeal case of *Pride Inn Hotels and Investments Limited v Tropicana Hotels Limited* [2018]eKLR to urge that they were entitled to bring the petition for liquidation on ground of inability to pay its debt by the respondent.
6. It submitted that the petitioner had a valid decree against the respondent arising in Nairobi CMCC No 4259 of 2019; that the decree has not been stayed, set aside varied and/or altered by a court of competent jurisdiction; a statutory notice was served upon the respondent and that the respondent is unable to pay its debt. It urged the court to find that sufficient evidence has been adduced to warrant the grant of the liquidation orders sought.

Analysis and Determination

7. I have considered the pleadings, and the submissions filed by the Petitioner. The issue for determination herein is whether a liquidation order should issue against the Respondent.
8. This court is satisfied that service upon the Respondent service was properly effected but the Respondent did not file any response to the Petition. It is not disputed that the Petitioner has a valid claim against the Respondent for a total sum of Kshs.1,171,323.05 arising out of a decree. There is no evidence before this Court that the Respondent settled or attempted to settle the said debt by paying the Petitioner the entire or part of the sum owed. There is also no evidence that the decree has been stayed or set aside by a court of competent jurisdiction.
9. Section 424 (1) of the *Insolvency Act* provides for instances when a company may be liquidated by the court. These are:
 - “ 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.”

10. The Petitioner seeks an order for liquidation to be made as against the Respondent on grounds that the latter is unable to pay its debts. Section 384 of the *Insolvency Act*, provides the circumstances in which a company may be deemed as being unable to pay its debts:

- “(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).”

11. On the basis of the evidence, I find that there is sufficient evidence that the Respondent is unable to settle its debts despite having been afforded an opportunity. This was both by way of service of the Statutory Notice and also by way of this petition. In *Pride Inn Hotels and Investments Limited v Tropicana Hotels Limited* [2018] eKLR, the Court of Appeal had this to say on the issue of liquidation:

“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).



12. There is a decree in force that is yet to be satisfied. I am therefore persuaded that the petitioner has established cause for liquidation of the company. In the circumstances, the petitioner is entitled to the relief provided in section 427(1)(c) of the Insolvency Act. Accordingly, I make the following orders:

- i. Stewan General Trading Company Ltd is hereby declared insolvent and is liquidated under the provisions of section 424 (1) (e) of the Insolvency Act;
- ii. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed as the Liquidator of the Respondent's properties to immediately take over the management of the company;
- iii. The Petitioner be at liberty to pursue the decretal sum of Kshs.1,171,323.05 plus interest at 14% from 27th April 2021 out of the assets of the Company in the ensuing liquidation process.
- iv. The petitioner shall have the costs of the petition which shall be borne out of the company assets

It is so ordered.

Dated, signed and delivered at Machakos this 2nd day of May 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....for Petitioner

.....for Respondent

Sam Court Assistant

