



REPUBLIC OF KENYA



KENYA LAW
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**In re Kings Pride Properties Limited (Insolvency Petition E174 of 2019)
[2025] KEHC 5879 (KLR) (Commercial and Tax) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5879 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E174 OF 2019**

PM MULWA, J

MAY 8, 2025

IN THE MATTER OF THE COMPANIES ACT NO 18 OF 2015

AND

IN THE MATTER OF THE COMPANIES ACT NO 17 OF 2015

AND

IN THE MATTER OF KINGS PRIDE PROPERTIES LIMITED LIQUIDATION PETITION

JUDGMENT

1. This matter arises from a liquidation petition dated 8th December 2019 filed by Sammy Mugendi Njeru and Joseph Kiruga (the Petitioners) seeking liquidation of Kings Pride Properties Limited (the Company) under Section 425 of the *Insolvency Act* No. 18 of 2015. The petition is predicated on the Company's alleged inability to pay its debts, particularly deposits made by the Petitioners towards the purchase of residential apartments in a development known as Glenwood Apartments, situated on the property known as L.R. No. Kimbaa/Ruaka/674.
2. The Petitioners aver that they made substantial deposits toward the purchase of the said apartments pursuant to offers dated 26th August and 1st September 2015. The total sums deposited by the Petitioners as at July 2019 amounted to Kshs. 9,776,000/-. Despite these payments, no sale agreements were furnished by the Company, no apartments were delivered and no refunds have been made, even after statutory demands were issued.
3. The Petitioners also filed their separate affidavit verifying the petition, sworn on 5th December 2023.
4. Opposing the petition, the Respondent filed a replying affidavit sworn by David Karanja Karau sworn on 2nd February 2022. He contends the instant petition is untenable as there is no sale agreement issued to the Petitioners to prove the purchase.



5. Notably, several other creditors filed affidavits in support of the liquidation petition, claiming debts aggregating to over Kshs. 21 million, which further evidences the Company's broader indebtedness and financial distress.
6. The court directed that the matter be determined by way of written submissions, and the parties complied.
7. The circumstances under which a company may be liquidated are to be found in Section 384(1) and (2) of the *Insolvency Act* which provides:

“(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).”

8. It is not in dispute that the Petitioners deposited sums of Kshs. 6,456,000/- and Kshs. 3,320,000/- respectively with the Company between the years 2015 and 2019 as part payment for the purchase of residential apartments to be constructed on L.R. No. Kimbaa/Ruaka/674. However, the Company failed to furnish the Petitioners with sale agreements and did not complete the development or refund the deposited sums. The Company attributes its failure to financial constraints and lack of funds, but no cogent evidence has been placed before this Court to substantiate these assertions.
9. A statutory demand was duly served upon the Company on 5th September 2019. There is no evidence on record indicating that the Company responded to, challenged, or satisfied the demand within the statutory period. Pursuant to Section 384(1)(a) of the *Insolvency Act*, the failure to comply with a statutory demand within twenty-one days raises a rebuttable presumption that the Company is unable to pay its debts and is, therefore, deemed insolvent.
10. The debt arises from a clear contractual arrangement for the purchase of apartments, and the Company's failure to either perform its contractual obligations or refund the sums received has not been controverted by any credible evidence. The Petitioners' claim, therefore, meets the threshold of a liquidated debt due and payable, and the Company's silence in the face of the statutory demand reinforces the statutory presumption of insolvency.



11. The powers of the court are outlined in Section 427 of the [Insolvency Act](#) provides as follows:

- “(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.”

12. It is therefore within the discretion of the Court to determine whether or not to issue a liquidation order, having regard to the totality of the evidence, the conduct of the parties, and the interests of justice. The Court is also mindful that liquidation is a remedy of last resort, a drastic remedy that amounts to corporate death and should only be granted where it is clear that the company is insolvent and no viable alternative is presented.

13. Having considered the pleadings, evidence, and applicable legal principles, the Court is satisfied that the Petitioners have established a prima facie case of insolvency against the Company under Section 384(1)(a) of the [Insolvency Act](#). The debt is not disputed, and no credible evidence has been placed before the Court to challenge the amounts claimed or to demonstrate that the Company is in a position to meet its obligations.

14. Furthermore, the Company has not presented any viable proposal for restructuring, settlement or alternative remedy that would warrant the exercise of this Court’s discretion in its favour.

15. Accordingly, I hereby issue the following orders:

- i. That a Liquidation Order be and is hereby issued in respect of Kings Pride Properties Limited.
- ii. That the Official Liquidator be and is hereby appointed to take over the management of Kings Pride Properties Limited.
- iii. Costs in the proceedings shall be in the cause

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Jaleba for Petitioner

Ms. Mangla, Mr. Ogendo, Mr. Chetambe & Mr. Andati for Creditors

Court Assistant: Carlos

