



**Moore v Seton & another (Insolvency Petition E011 of 2023)  
[2025] KEHC 5732 (KLR) (Commercial and Tax) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5732 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY PETITION E011 OF 2023**

**NW SIFUNA, J**

**MAY 9, 2025**

**BETWEEN**

**KATHERINE LINDA MOORE ..... APPLICANT**

**AND**

**DAVID SETON ..... 1<sup>ST</sup> RESPONDENT**

**FOXCOTTE LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Katherine Linda Moore a shareholder in the Respondent Company, has brought a Notice of Motion dated 14<sup>th</sup> December 2023. The motion seeks the following orders:
  - a. The Petition dated 14<sup>th</sup> February 2023 be dismissed with costs.
  - b. In the alternative to prayer 1 above, the court to adjourn the hearing of the liquidation petition for 24 months or for such period as the court may deem fit.
  - c. Upon grant of prayer 2 above, the Court to order the Petitioner to accept an offer by the Applicant, to purchase his shares at current market value, to enable him exit the company.
  - d. The costs of this application be awarded to the Applicant.
2. The Application was support by the grounds on the face of it and by the sworn Affidavit of Katherine Linda Moore who stated that the Petitioner has not exhausted alternative remedies available to him as a shareholder, including accepting the Applicant's offer to purchase his shares to enable him exit the company.



3. Further, that the Petition is filed prematurely, and in any event with mala fides, to deprive the Applicant of the ability to remain in Kenya, earn a living, and fight against the infringement of her employment and property rights.
4. The Respondent filed a Replying Affidavit dated 26<sup>th</sup> January 2024 and stated that the company has been dormant without any authorised activity by the Board of Directors which comprise of the Respondent and the Applicant. That the Respondent discovered in the year 2020 that the Applicant had exclusively without his knowledge, or consent fraudulently procured Annual Report and Financial Statements for the financial year ending 31/12/2020 wherein she misrepresented that the Director serving during the said business period was the Respondent.
5. Having considered the Application, the response and the parties' written submissions, the court drafts only one issue for determination; whether the Petition should be dismissed.
6. The instances under which a Company may be liquidated by the Court are provided for under Section 424(1) of the *Insolvency Act*, 2015 which 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* (Cap. 486); and
    - j. 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.”
7. By his own admission, the Petitioner stated that the company has no assets and no outstanding liabilities. However, the Petitioner is seeking an order for liquidation to be made as against the Respondent on grounds that the company has been unable to and not conducted any business since the year 2020 due to disagreement resulting from irreconcilable differences between the directors of the company.
8. One of the grounds listed above is that a company may be liquidated if it suspends its business for a whole year. It is notable that the words used in this section is ‘may be’ thus not couched in mandatory terms. Therefore, a company will not necessarily be liquidated for failing to conduct its business for a



whole year. The court notes that the Petitioner did not adduce any evidence to show that the company has not conducted any business since 2020 as alleged.

9. It was the Respondent's submission that the Applicant has not established sufficient grounds to adjourn the hearing of the liquidation for 24 months. The Respondent argued that he has demonstrated that the objects upon which the company was created are no longer in place.
10. The Respondent also alleged that the Applicant had falsified Subject Annual Report and Financial Statements for the subject company thereby misrepresenting that the financial accounts and audit report is a true and fair account of the company. It is imperative to note that several of the issues raised by the Respondent are not among the grounds listed above for the grant of a liquidation order against a company.
11. In submissions the Applicant argued that the Petition was filed prematurely as the Petitioner has not exhausted alternative remedies available to him, as a shareholder including accepting the Applicant's offer to purchase his shares to enable him exit the company. In addition, the Applicant cited Section 427(1)(b) of the *Insolvency Act* which authorises the court to adjourn the hearing of the Petition for insolvency conditionally or unconditionally.
12. Section 427 of the *insolvency Act* which sets out the court's powers on hearing and determination of a liquidation application and 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.

(2) “However, the Court may not refuse to make a liquidation order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.”

(3) “If the application is made by members of the company as contributories on the ground that it is just and equitable that the company should be liquidated, the Court shall make a liquidation order, but only if of the opinion that—

- a. that the Applicants are entitled to relief either by liquidating the company or by some other means; and
- b. that, in the absence of any other remedy, it would be just and equitable that the company should be liquidated.

(4) Sub-section (3) does not apply if the Court is also of the opinion that—

- a. some other remedy is available to the Applicants; and
- b. they are acting unreasonably in seeking to have the company liquidated instead of pursuing that other remedy”



13. It is the court's considered view that the hearing of the Petition be adjourned to give room and time to the parties to resolve their issues. In particular, if the Applicant is willing to purchase the Petitioner's shares in the company; this should be given a chance. In exercise of the Court's discretion the court adjourns the hearing of the Petition on condition that the parties work towards an amicable solution in the next 90 days. Failing which the Petition shall be heard and determined.

**DATED AND DELIVERED AT NAIROBI ON THIS 9<sup>TH</sup> DAY OF MAY 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

