



REPUBLIC OF KENYA



**Momanyi v Munga & another (Insolvency Petition E060 of 2023)
[2025] KEHC 5777 (KLR) (Commercial and Tax) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E060 OF 2023**

PM MULWA, J

MAY 8, 2025

BETWEEN

ENG. GODFREY MARAMBE MOMANYI PETITIONER

AND

ROBERT BICHAGE MUNGA 1ST RESPONDENT

DOREEN NYAKERARIO ONWONGA 2ND RESPONDENT

RULING

1. Before the Court is a Notice of Motion dated 16th September 2024, brought under Section 5 of the *Judicature Act*, Cap 8, Sections 1A, 1B, 3A and 38(c) of the *Civil Procedure Act*, and Order 40 Rules 2, 4 and 8, as well as Order 51 Rule 1 of the Civil Procedure Rules, 2010.
2. The Applicant seeks, inter alia, a stay of further proceedings in Insolvency Petition No. E060 of 2023, pending the hearing and determination of a contempt application dated 6th September 2024 in Commercial Petition No. E017 of 2023. The Applicant also seeks the costs of the application.
3. The foundation of the application is that the Honourable Court, vide orders issued on 31st October 2023 and 14th December 2023 in Petition No. E017 of 2023, directed that the operations of Energy Intelligence Africa Limited (the Company) continue without interference. The Respondent, Eng. Godfrey Marambe Momanyi, was present through counsel and duly notified of the said orders. These orders required the restoration of ICT access, facilitation of payments to staff and statutory bodies (NHIF, NSSF) and payment of directors' salaries.
4. It is alleged that the Respondent has willfully disobeyed these orders, thereby crippling the operations of the Company and violating the authority of this Court. It is further contended that until he purges the contempt, he forfeits the right of audience before this Court.



5. The application is opposed. The Respondent/Petitioner, Mr. Godfrey Marambe, filed a replying affidavit sworn on 23rd September 2024. Both parties have filed written submissions. The Applicants' submissions are dated 17th October 2024, and the Respondent's are dated 31st October 2024.
6. The Applicants submit that allowing the continuation of the liquidation petition, while contempt proceedings remain unresolved, would reward disobedience and erode the court's authority. They argue that stay is necessary to uphold the integrity of judicial orders.
7. The Respondent, on the other hand, maintains that the relationship among directors has irretrievably broken down and that the company has been non-operational and unprofitable for over two years. He denies disobeying any orders and argues that the contempt application is a delay tactic. He emphasizes that the two petitions - Insolvency Petition No. E060 of 2023 and Commercial Petition No. E017 of 2023 - are distinct and ought to proceed independently.
8. The court acknowledges that the power to grant a stay of proceedings is discretionary and must be exercised judiciously and sparingly. As stated in *Kenya Wildlife Service v James Mutembei* [2019] eKLR, where Gikonyo, J. held that:

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, the right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent.”
9. I have considered both petitions. Petition No. E060 of 2023, filed by the Respondent herein, seeks the liquidation of Energy Intelligence Africa Limited on grounds of insolvency. Petition No. E017 of 2023, filed by Robert Bichage and Doreen Nyakerario, alleges that the Respondent's actions are oppressive and prejudicial to the interests of the Applicants. The court orders in question emanate from the latter petition.
10. The orders of 31st October and 14th December 2023 were clear in their intent to preserve the company's operations. The alleged defiance of these orders by the Respondent, if established, undermines the rule of law and the authority of this Court.
11. It is a well-settled principle, as established in *Hadkinson v Hadkinson* [1952] 2 All ER 567, that a party in contempt should not be heard until the contempt is purged. To proceed with a liquidation petition brought by the very person accused of disobeying court orders would be to condone such conduct and allow the court's processes to be abused.
12. I am satisfied that the contempt application dated 6th September 2024 raises serious issues that must be addressed before any further steps are taken in the liquidation proceedings. It would be unjust and prejudicial to allow a party alleged to be in contempt to continue prosecuting parallel proceedings which, if successful, could irreversibly affect the company and its stakeholders.
13. In the result, I find merit in the application dated 16th September 2024 and the same is allowed.
14. In the circumstances, a stay of all further proceedings in Insolvency Petition No. E060 of 2023 is hereby granted, pending the hearing and determination of the contempt of court application dated 6th September 2024 in Commercial Petition No. E017 of 2023.
15. Costs of this application shall be in the cause.

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



PETER M. MULWA

JUDGE

In the presence of:

Ms. Kiama h/b for Mr. Mageto for Petitioner/Respondent

Ms. Mureithi h/b for Mr. Mueke for Respondents/Applicants

Court Assistant: Carlos

