



**Oil Seals & Bearing Centre Limited v East African Portland
Cement Company Limited (Commercial Cause E060 of 2023)
[2025] KEHC 5803 (KLR) (Commercial and Tax) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5803 (KLR)

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

PM MULWA, J

MAY 8, 2025

**IN THE MATTER OF PETITION BY OIL SEALS AND BEARINGS
CENTRE LIMITED FOR LIQUIDATION ORDER TO BE ISSUED
AGAINST EAST AFRICAN PORTLAND CEMENT COMPANY LIMITED**

AND

OIL SEALS & BEARING

IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015

AND

IN THE MATTER OF EAST AFRICAN PORTLAND CEMENT COMPNAY LIMITED

BETWEEN

OIL SEALS & BEARING CENTRE LIMITED CREDITOR

AND

EAST AFRICAN PORTLAND CEMENT COMPANY LIMITED DEBTOR

RULING

1. This ruling pertains to the Applicant's Notice of Motion dated 11th December 2023, seeking, inter alia, orders to restrain the Respondent, Oil Seals and Bearing Center Limited, from filing or advertising an insolvency petition premised on the statutory demand dated 4th May 2023 and amended on 10th May 2023. The application further seeks enlargement of time within which to file an application to set aside the said statutory demand. The demand relates to an alleged debt of Kshs. 12,396,846.80 together with



accrued and accruing interest and costs. The application is supported by the affidavit of Simon Peter, the Applicant's legal officer, and is grounded on the reasons stated on its face.

2. The Respondent opposes the application through a replying affidavit sworn on 25th March 2024 by Satish Patel. Both parties have also filed written submissions in support of their respective positions.

Analysis and determination

3. The Court has carefully considered the pleadings, submissions and evidence placed before it by rival parties.
4. At the core of this application is a statutory demand issued by the Respondent, Oil Seals and Bearing Center Limited, on 4th May 2023 and amended on 10th May 2023, demanding payment of Kshs. 12,396,846.80 together with accrued and accruing interest and costs. The Applicant, (Debtor Company), seeks two substantive reliefs. That is, an order restraining the Creditor from filing and advertising an insolvency petition premised on the said statutory demand, and enlargement of time within which to file an application to set aside the demand.
5. It is not in dispute that the Applicant and the Respondent had a long-standing commercial relationship involving the supply of oil seals and bearings on credit. The Respondent contends that the Applicant defaulted in meeting its repayment obligations, necessitating the issuance of the statutory demand.
6. The Applicant, on its part, disputes the quantum of the debt, asserting that it is inflated and, in any event, subject to genuine contestation. It maintains that the invocation of insolvency procedures in this context is inappropriate, given that such mechanisms are designed to address a company's inability to pay undisputed debts, and not to resolve contested commercial claims.
7. The applicable legal position is well settled, as held by the Court of Appeal in the case of Universal Hardware Limited v African Safari Club Limited-MSA CA Civil Appeal No. 209 of 2007 [2013] eKLR. The court observed that:

“The principle as I understand is that a disputed debt on substantial and bona fide grounds cannot be the subject of winding-up proceedings on account of the company's inability to pay its debts. The case law and scholarly writings are categorical that a creditor's petition should not be entertained if it is to enforce a debt that is disputed and the company is solvent, otherwise it will be treated as a scandalous and abuse of the process of the court and will be struck out on that basis.”

8. However, the mere existence of a dispute does not automatically render a statutory demand invalid. In *Peter Munga v African Seed Investment Fund LLC -HC COMM IC No. 2 of 2016 [2017]* the Court declined to strike out the statutory demand on the ground that some of the amount was disputed. The court held that:

“It is important to point out that the mere overstatement of amount claimed in a statutory demand does not per se invalidate the demand. The debtor is obligated to contest the amount and within the requisite period and additionally it must be such as to cause prejudice and injustice to the debtor if the demand was allowed to subsist.”

9. In the instant case, while the Applicant avers that the debt is disputed, no evidence of a bona fide counterclaim, set-off, or substantial contestation has been placed before this Court. A mere denial or assertion that the debt is in dispute, unaccompanied by credible documentary or factual support, does not suffice to establish a dispute under Regulation 17(6)(b) of the Insolvency Regulations.



10. Notwithstanding the foregoing, the Applicant has also sought an enlargement of time within which to file an application for setting aside the statutory demand. It is trite law that this Court is clothed with wide discretion to enlarge time under Section 95 of the *Civil Procedure Act*, which provides:

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”
11. Such discretion, however, must be exercised judicially and not whimsically, and must be informed by sound legal principles and the peculiar facts of each case.
12. In the present case, the Applicant contends that upon being served with the amended statutory demand, it entered into negotiations with the Respondent in good faith, with the objective of resolving the dispute amicably. During that time, the statutory period within which to file an application to set aside the demand elapsed. The Applicant has now moved this Court seeking an enlargement of time to enable it to challenge the demand on its merits.
13. In considering whether to grant such relief, the Court is guided not only by Section 95 of the Act, but also by Sections 1A and 1B of the *Civil Procedure Act*, which impose a duty upon courts to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. These provisions underscore the need to prioritize substantive justice over procedural technicalities.
14. On the material placed before this Court, and in the absence of evidence showing that the Respondent stands to suffer prejudice that cannot be remedied by costs or appropriate directions, the Court is satisfied that it is in the interest of justice to allow the Applicant an opportunity to be heard.
15. In view of the foregoing, I find the Notice of Motion dated 11th December 2023 meritorious and I accordingly issue the following orders:
 - a. The Applicant is granted leave to file an application to set aside the statutory demand dated 4th May 2023 and amended on 10th May 2023 within seven (7) days from the date hereof.
 - b. Pending the hearing and determination of the said application, the Respondent is hereby restrained from filing or advertising any insolvency petition based on the said statutory demand.
 - c. Costs 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:

Mr. Bundotich for Petitioner/Respondent

Mr. Simiyu for Debtor/Applicant

Court Assistant: Carlos

