



**Wanjama v Carnet General Merchants Limited (Insolvency Petition E014 of 2024)
[2025] KEHC 8325 (KLR) (Commercial and Tax) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8325 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E014 OF 2024**

FG MUGAMBI, J

JUNE 13, 2025

BETWEEN

ADAM MUTURI WANJAMA PETITIONER

AND

CARNET GENERAL MERCHANTS LIMITED RESPONDENT

JUDGMENT

1. The petitioner filed a creditor's petition dated 28th February 2024 seeking orders that Carnet General Merchants Limited be liquidated under the provisions of the *Insolvency Act*, 2015 and that the Official Receiver be appointed as the provisional liquidator.
2. The petitioner's case is that he is a judgment creditor of the respondent pursuant to a decree issued in HCCC No. E465 of 2022, where he was awarded Kshs. 29,241,388.49, with interest accruing at 30% per annum. In partial satisfaction of the judgment, the parties executed a Partial Deed of Settlement dated 30th June 2023, under which the respondent transferred nine motor vehicles valued at Kshs. 19,100,000/= to the petitioner.
3. The balance of Kshs. 15,989,666.09 was to be paid by 30th September 2023. However, the respondent defaulted on this obligation, prompting the petitioner to issue a statutory demand dated 15th November 2023. The petitioner states that the debt remains unpaid and that the statutory demand having gone unanswered, the respondent is presumed insolvent under Section 384 of the *Insolvency Act*. He urges the court to issue a liquidation order and appoint the Official Receiver as the provisional liquidator, with costs to be paid from the company's assets.
4. The respondent opposes the petition through a replying affidavit sworn on 26th February 2025 by its director, Gideon Evanson Maina Irungu. He confirms that the debt in question arose from a loan advanced by the petitioner on 29th September 2020 and attributes the company's failure to repay to



financial distress occasioned by the COVID-19 pandemic and business losses. He acknowledges that nine vehicles were transferred to the petitioner as part settlement but admits that the outstanding balance remains unpaid due to ongoing financial constraints.

Analysis and Determination.

5. The primary issue for determination is whether the petitioner has satisfied the legal threshold for the liquidation of the respondent company under the *Insolvency Act*. It is not in dispute that the petitioner is a judgment creditor and that the respondent owes the sum of Kshs. 15,989,666.09, which remains unpaid. The issuance of a statutory demand and the respondent's failure to comply within the stipulated period is a sufficient ground for presuming insolvency under Section 384(1)(a) of the *Insolvency Act*.
6. The section provides that a company is deemed unable to pay its debts if it fails to pay a debt of Kshs. 100,000/= or more within twenty-one days of service of a written demand, or where execution on a judgment is returned unsatisfied, or if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due. The respondent has through its director admitted to the indebtedness and its inability to pay. This admission supports the petitioner's claim.
7. Section 424 (1) of the *Insolvency Act* further provides that a company may be liquidated by the court if it is unable to pay its debts. In *Prideinn Hotels & Investments Limited V Tropicana Hotels Limited*, [2018] eKLR, the Court of Appeal upheld the liquidation of a company that failed to satisfy a statutory demand, affirming that such failure is a proper basis for liquidation.
8. In the present case, the respondent has not disputed the debt nor provided any evidence of a viable restructuring or rescue plan. Instead, the respondent has acknowledged its continued financial difficulties and has not proposed any alternative measures to satisfy the debt or preserve its business operations. The respondent's director candidly admits at paragraph 8 of the replying affidavit:

“Despite our efforts to offset this liability since 2020 the Company remains financially strained and unable to clear the debt in full at this time.”
9. Under the circumstances I find no basis to conclude that placing the company under administration as an alternative would yield a more favourable outcome than liquidation. On the contrary, the evidence points to the company's insolvency and the absence of any realistic prospect of recovery. I am therefore satisfied that liquidation is the appropriate remedy in the circumstances to safeguard the interests of creditors.

Disposition

10. Accordingly, a liquidation order is hereby issued against Carnet General Merchants Limited under Section 384 as read with Section 427 of the *Insolvency Act*, 2015. The Official Receiver is hereby appointed as the provisional liquidator of the company and shall be served with a copy of the Court's orders within 7 days. The costs of this petition shall be paid out of the company's assets.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 13TH DAY OF JUNE 2025.

F. MUGAMBI

JUDGE

