



**Confy Limited v Complete Autocentre Limited (Insolvency Petition E072 of 2023)
[2025] KEHC 10908 (KLR) (Commercial and Tax) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10908 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E072 OF 2023**

BK NJOROGE, J

JULY 24, 2025

BETWEEN

CONFY LIMITED PETITIONER

AND

COMPLETE AUTOCENTRE LIMITED RESPONDENT

JUDGMENT

1. This is a Judgment in respect of the insolvency petition filed by the Petitioner against Complete Autocentre Limited, the Respondent.

Background Facts

2. The Petitioner filed the Petition dated 15th November 2023 and stated that the company is justly and truly indebted to the Petitioner and remains indebted in the aggregate sum of Kshs.1,787, 400 being the amount due to the Petitioner pursuant to various goods delivered on diverse dates from 15th April 2019 to 7th December 2019.
3. The Petitioner has made repeated requests to the Company for the payment or part payment of the debt amount, but the Company has failed or neglected or refused to pay the debt amount.
4. On 21st July 2023, the Petitioner served a Statutory Demand upon the Company at its registered office in Nairobi and by way of email demanding the Company to pay the Debt amount within 21 days after service of the said Statutory Demand.
5. After the lapse of the 21 days given under the Statutory Demand, the Company has neither complied with nor set aside the same for the payment of the debt amount.
6. The Petitioner prayed for orders that;



- a. The company be liquidated by the court under the provisions of the *Insolvency Act*
 - b. The court do appoint the official receiver who is an authorized Insolvency Practitioner as the provisional liquidator
 - c. The costs of the Petition be granted to the Petitioner and be paid out of the Company's assets and
 - d. Such other order may be made in the circumstances as the court shall deem just.
7. The Respondent did not participate in the proceedings despite the fact that the Respondent was duly and timely served on the Complete Autocentre Limited both physically in their offices and also via the advertisement for liquidation in this matter. This was placed in the Daily Nation Newspaper Edition of Wednesday 20th March, 2024. There are also Affidavits of Service that are on record, evidencing the aforementioned service, which are dated 5th July, 2024 and 4th November, 2024.

Issues for Determination

8. The Petitioner filed written submissions, which the Court has taken into consideration, and frames only one issue for determination.
- a. Whether the Company ought to be liquidated.

Analysis

9. The Petition was brought under Section 425(1)(b) of the *Insolvency Act*, 2015. The said provisions state as hereunder-

An application to the Court for the liquidation of a company may be made any or all of the following-

- a.;
 - b. a creditor or creditors (including any contingent or prospective creditor or creditors) ...
10. In addition to the above, 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
 - ii. 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.”

11. The Petitioner’s case was that the Company is indebted to the Petitioner and remains so in the aggregate sum of Kshs.1,787, 400/= being the amount due to the Petitioner pursuant to various goods delivered on diverse dates from 15th April, 2019, to 7th December, 2019.

12. Liquidating a company is a draconian step which amounts to corporate execution. The Court of Appeal in the case of *Pride Inn Hotels and Investments Limited v Tropicana Hotels Limited* [2018] eKLR, Visram JA., reading the majority judgment of the Court, had this to say on the issue of liquidation-

“This was clearly the case herein since the appellant did not make any payments after being served with a notice of demand by the respondent. Hence the respondent was entitled to bring a petition for liquidation of the appellant on the ground of its inability to pay its debt. Equally, I find no fault on the part of the learned Judge for issuing the liquidation order. There is no requirement under the *Insolvency Act* or the *Companies Act*, which stipulates that liquidation of a company should be as a last resort. Liquidation is one of the options under the *Insolvency Act* which a creditor such as the respondent in the case, could pursue to secure payment of a debt, especially a debt that remains unpaid for several years and in respect of which the appellant has been given adequate time, opportunity and indulgence.”

13. Bearing in mind the above decision, the evidence to be taken into account in establishing that a company is unable to pay its debts are set out under Section 384 of the *Insolvency Act*, as follows:

- (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).



14. The Court confirms that a Statutory Demand dated 21st July 2023 was served upon the Respondent, and up to date, there is no pending application seeking to set aside the said Statutory Demand in respect of the debt owed by the company. The Company has been properly served with a Statutory Notice under Section 384(1)(a) of the *Act* as a pre-condition for presentation of the Petition. It is therefore deemed that the company is unable to pay its debt to the Petitioner.
15. It is the Court's considered view that the Petition has satisfied all the foregoing requirements under the *Insolvency Act*.

Determination

16. The Court allows the Petition dated 15th November, 2023 in the following terms: -
 - a) A Liquidation Order be and is hereby issued in respect of the Company, Complete Autocentre Limited.
 - b) The Official Receiver be and is hereby appointed the Liquidator.
 - c) The costs of the Petition shall be borne out of the Company assets.
17. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY, 2025

NJOROGE BENJAMIN K.

JUDGE

In the presence of

Mr. Karanja for the Petitioner.

N/A for the Respondent.

Mr. Luyai Court Assistant

