



**Peter v Invesco Assurance Company Limited (Insolvency Cause
1A of 2024) [2025] KEHC 10966 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10966 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
INSOLVENCY CAUSE 1A OF 2024
EM MURIITHI, J
JULY 24, 2025**

BETWEEN

TERETHA WANJIKU PETER PETITIONER

AND

INVESCO ASSURANCE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The petitioner filed a petition dated 22nd December, 2023 and states that:
 1. That the said Invesco Assurance Company Limited of P. O. BOX 52964 -00200 Nairobi, has within the period of one (1) year preceding the presentation of this petition carried on business at Lavington, Nairobi within the jurisdiction of this court.
 2. That the said Invesco Assurance Company Limited is justly and truly indebted to me in the aggregate sum of Kshs. 1,726,261/= (Kenya Shillings One Million Seven Hundred Twenty-Six Thousand, Two Hundred Sixty-One Only).
 3. That I do not, nor does any person on my behalf hold any security on the said debtor's estate, or any part thereof, for the payment of the said sum.
 4. That the amount owed by Invesco Assurance Company Limited is within the prescribed bankruptcy level in accordance with the *Insolvency Act* and Rules.
 5. That Invesco Assurance Company Limited has no reasonable prospect of paying the debt.
 6. There is no outstanding application to set aside the statutory demand in respect of the debt owed to me by Invesco Assurance Company Limited.
 7. That 21 days have elapsed since I served the statutory demand upon Invesco Assurance Company Limited and neither has it complied with or set aside the Statutory Demand.



2. The Petitioner's supporting affidavit sets out the facts relied on that the petitioner's case is that the judgment was delivered against the Respondent on 20th June 2019 where the court granted a declaration that Invesco Assurance Company Ltd is under a statutory duty to pay me the decretal sum in *Baricho PMCC NO. 65 OF 2017* with interest from the date of the suit. The Decree is for a principal sum of Ksh. 846,850/= plus interest and costs of Ksh. 150,423/=. The Respondent has not satisfied the judgment debt to date.
3. Further, that on 6th January, 2023 the petitioner served the Respondent with a Statutory Demand Notice demanding payment of the decretal amount together with interest amounting to Ksh. 1,726,261/= as at 2 August 2022.
4. Lastly, the Respondent has failed to pay the debt or any part of the debt or comply with the statutory demand.
5. The petitioner filed a supplementary affidavit indicating that on 23rd July, 2024, the Respondent through their Advocate Muhoho Gichimu & Co. Advocates indicated that the Respondent intended to settle the entire sum claimed being Kshs. 1,726,261/=. The Respondent's Advocate stated that the Respondent would deposit Kshs 300,000/= to her Advocate on record, which he did on the same day, and she confirm receipt. However, the Respondent is, however, unable to settle the outstanding sum of Kshs.1,426,261/= that remains unpaid to date.

Issue

6. Whether the respondent's company should be liquidated.

Analysis

7. The petitioner (suing through legal representative of the deceased estate) was a victim of a road traffic accident. She sued for the fatal for the injuries sustained in the road traffic accident and obtained compensation in judgment against owner of the vehicle which had been insured by Invesco. The petitioner later obtained a declaratory judgment against Invesco in *Baricho PMCC NO. 65 OF 2017*.
8. Demand notices were served on Invesco as the insurer but no payments were made, forcing her to serve a statutory demand notice under the *Insolvency Act*, which was also ignored. The petitioner then filed this petition for the liquidation of Invesco as it is indebted to her in the aggregate sum of Kshs. 1,726,261/=
9. The respondent did not file a Replying affidavit. Both parties did not file submissions.

Whether Invesco failed to pay the decretal sum

10. On 6th January 2023 the petitioner served the Respondent with a Statutory Demand Notice demanding payment of the decretal amount together with interest amounting to Ksh. 1,726,261/= as at 2 August 2022. The Respondent has failed to pay the debt or any part of the debt or comply with the statutory demand.
11. According to Section 4 of the *Insurance (Motor Vehicle Third Party Risks) Act* (Cap 405). The petitioners' case is that Invesco has failed to meet its debt obligations and should be liquidated.
12. Section 424(1) (e) of the *Insolvency Act* provides that a company may be liquidated if it is unable to pay its debts. Section 2 of the Act defines "debt" as the obligation or liability of a person to pay money or money's worth, which includes liability under a written law, liability under a contract/bailment or liability arising from an obligation to make restitution, among others. On that basis, the petitioner



asserted that Invesco, as the insurer, has an obligation to pay the debt as a requirement of law, namely, the *Insurance (Motor Vehicle Third Party Risks) Act*.

13. Section 384 of the *Insolvency Act* states that among the circumstances in which a company is unable to pay its debts is that “(a) 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”.
14. Under section 424 of the *Act*, the Circumstances in which company may be liquidated by the Court include that “(e) the company is unable to pay its debts” and by section 425 (1) (b) an application to the Court for the liquidation of a company may be made “(b) a creditor or creditors (including any contingent or prospective creditor or creditors)”.
15. The petitioner avers that more than 21 days have lapsed and the Respondent has not settled the judgement debt which continues to attract interest. The Respondent was served with a statutory notice under section 384(1)(a) of the *Insolvency Act* as a pre-condition for presentation of this petition. The petitioners aver that the said notice was served on the respondent on 6th January, 2023.
16. The petitioner states that on 23rd July, 2024, the Respondent through their Advocate Muhoho Gichimu & Co. Advocates indicated that the Respondent intended to settle the entire sum claimed being Kshs. 1,726,261. The Respondent’s Advocate stated that the Respondent deposited Kshs 300,000/=.
17. In *re Invesco Assurance Company Limited* (Insolvency Petition 10 of 2021) [2022] KEHC 17030 (KLR) (22 April 2022) (Ruling), the court Mwangi J. held: It is uncontroverted that there is a court decree against the company, which remains unsatisfied to date... An interim liquidation order is hereby issued in respect of the company, Invesco Assurance Company Limited.
18. In the present case, the debt of Ksh.1,726,261 as at 2/8/2022 by virtue of *Barichu PMCCC NO. 65 of 2017* is established. It has been partly paid in the sum of Ksh.300,000/-. The Respondent is shown to have been unable to pay the balance of the decretal sum of 1,426,261/=, as at 2/8/2022, for over one year since the date of the part payment on 23/7/2024. The petition must succeed.
19. Section 427 of the *Insolvency Act* provides for the powers of the Court that:
 - “427. Powers of Court on hearing of liquidation application
 - (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.”

Conclusion

20. There is a court decree for the petitioner against the respondent which remains unsatisfied to date. The petitioner has therefore established grounds for liquidation of the company and as a result, the petitioner is entitled to an interim order of liquidation pursuant to section 427(1) (c) of the *Insolvency Act*.
21. In the absence of any response by the respondent, as the application is merited, the Court has no basis for adjourning the hearing, conditionally or unconditionally or for making any other order in the circumstances of the case. Consequently, an order for interim liquidation may be granted, and the court will grant the reliefs sought by the petitioner herein.
22. The Court does have the detailed particulars of the liquidation in the case authority apparently against the same respondent referred above, re Invesco Assurance Company Limited, supra, in terms of section 432 (3) of the *Act*, which provides as follows:

“432. Consequences of liquidation order

- (1) Within seven days after a liquidation order is made in respect of a company, the company shall lodge a copy of the order with the Registrar for registration and also lodge a copy of it with the Official Receiver.
- (2) When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate.
- (3) An order for liquidating a company operates in favour of all the creditors and of all contributories of the company as if made on the joint application of all of them.”

In abundance of caution, the Court shall grant the relief sought by the Petitioner herein.

ORDERS

23. Accordingly, for the reasons set out above, and in terms of the power of the Court under section 427 (1) (c) of the *Insolvency Act*, the Court grants an order for interim liquidation order.
24. The costs of the petition shall be borne by the Respondent.
25. File closed.

Order accordingly.

DATED AND DELIVERED THIS 24TH DAY OF JULY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances

Ms. Natocho for Mr. Magee for the Applicant.



Mr. Muhoho Gichimu for the Respondent.

