



**Telegan Investments Limited v Standard Chartered Bank (Insolvency Petition E054 of 2022)
[2025] KEHC 11315 (KLR) (Commercial and Tax) (28 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E054 OF 2022**

AA VISRAM, J

JULY 28, 2025

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

BETWEEN

TELEGAN INVESTMENTS LIMITED APPLICANT

AND

STANDARD CHARTERED BANK RESPONDENT

JUDGMENT

Introduction and Background

1. By a Petition dated 7th November, 2022, the Petitioner sought an order for its voluntary liquidation. It stated that it was a private limited liability company incorporated in Kenya on 9th December 2008 under the repealed *Companies Act*, with its registered office at Telagen Gardens, Lavington, on L.R. No. 330/1070. Its principal business was real estate investment. Its nominal share capital was Kshs. 100,000.00/-, divided into 1,000 ordinary shares of Kshs. 100.00/- each. The directors included David Karanja Karau, Joshua Ng'ang'a Njeri, and Lucy Wairimu Mbuthia.
2. The Petitioner contended that its financial position had deteriorated due to increased interest rates and penalties on bank loans, lack of purchasers for its apartments and properties, and the adverse effects of the global Covid-19 pandemic. It claimed to be indebted to the tune of Kshs. 415,000,000.00/- as of September 2022, comprising loans, salaries, and other payables. The listed creditors included Ecobank Kenya Limited, Family Bank Limited, Standard Chartered Bank Limited, KCB Bank Limited, ARM Cement PLC, and others.
3. The Petitioner averred that it exceeded the insolvency threshold under the *Insolvency Act*, was unable to pay its debts, and that its directors resolved on 1st November, 2022 to voluntarily wind up the company. It prayed for orders to liquidate the company and appoint the Official Receiver as liquidator.



Responses by Creditors

4. Family Bank opposed the Petition, arguing that the loan repayment terms were guided by executed loan instruments which the Petitioner defaulted on despite restructuring. It claimed an outstanding debt of Kshs. 10,986,052.39/-. The bank had previously granted facilities secured by multiple properties and obtained statutory notices after persistent default.
5. Ecobank Kenya Limited, a secured creditor, also opposed the Petition. It had extended a facility of Kshs. 90,800,000.00/- secured by a legal charge over Nairobi Block 93/1488. The Petitioner defaulted and failed to honor a consent order settling Kshs. 89,136,722.65/-. Only Kshs. 3,475,150.40/- had been paid, leaving an outstanding balance of Kshs. 141,284,445.77/-. Ecobank submitted that the Petition lacked evidentiary basis under Section 384 of the *Insolvency Act* as it did not include financial statements or statements of affairs. It cited *Re Consumer Acceptance Limited* [2020] eKLR, (which this court was unable to locate) in support of its argument that bare assertions of insolvency without financial records cannot justify liquidation.
6. Standard Chartered Bank Limited and KCB Bank Limited similarly opposed the Petition, asserting enforceable security interests over several properties and arguing that voluntary liquidation could not be used to frustrate secured creditors' statutory power of sale. They relied on Sections 23(3) and 24 of the *Insolvency Act* and cited *East Africa Cables PLC v Ecobank Kenya Limited* [2020] and *Tusker Mattresses Limited v Equity Bank* [2022], which affirmed secured creditors' rights.
7. ARM Cement PLC (in liquidation) similarly objected to the Petition, arguing that the Petition was a bad faith tactic to delay repayment. It highlighted the Petitioner's non-compliance with Regulation 77B of the Insolvency Regulations 2016, which required production of a Statement of Financial Position in respect of applications for liquidation made pursuant to Section 425 of the *Insolvency Act*. It cited *Dune Packaging Limited v Korara Highlands Tea Factory* [2024], where a similar petition was struck out for failure to meet procedural requirements. ARM also pointed to an unfulfilled offer by the Petitioner to settle part of its debts via its subsidiary Kings Pride Properties, demonstrating the availability of alternative remedies to liquidation.

Analysis and Determination

8. The issue for determination is whether the Petition meets the threshold for liquidation under Sections 424 and 425 of the *Insolvency Act*?
9. I note from the outset, that the Petition is labelled as a 'voluntary liquidation', and the Petitioner attached documentation showing that the shareholders passed a special resolution to liquidate the company. However, notwithstanding the said label, I must state that a 'voluntary liquidation' by members of the company applies only in respect of a company that is solvent.
10. In such a scenario, the process includes the following steps: first and foremost, before a company passes resolution for voluntary liquidation, the directors must make a statutory declaration to the effect that they have made an enquiry into the affairs of the company and that they have formed an opinion that the company will be able to pay its debts in full within one year. The statutory declaration must also be made at least five weeks before the passing of the resolution and must be accompanied by a statement of the company's assets and liabilities. This was not done and therefore labels aside, the present Petition may not be characterised as a voluntary liquidation by members.
11. Additionally, in a voluntary liquidation the company must also give notice of the proposed resolution to a holder of a qualifying charge. Such resolution to voluntarily liquidate the company may then be



passed after expiry of the seven days from the date when the notice was given, or earlier, if the recipient of the notice gives written consent. The company must subsequently publish a notice of the resolution in the Kenya Gazette, local newspapers and on its website within 14 days after it has been passed. Again, this was not done.

12. In the absence of compliance with the above provisions, the application for liquidation ceases to be voluntary; and a liquidation order may only be issued based on the provisions governing liquidation by the High Court which are set out in Section 424 of the [Insolvency Act](#) 2015.
13. Turning to Section 424(1)(a), while the said section allows for an order of liquidation if a company resolves to be wound up, or is unable to pay its debts, Section 384 defines insolvency as circumstances in which the liabilities exceed the assets or the ability of a company to pay its debts as they fall due.
14. The above position is to be proved by way of documentary evidence, such that the court may assess, and based on financial records, satisfy itself that the company is no longer commercially viable. This is not possible in the present matter because the Petitioner did not comply with Regulation 77B, which requires it to produce a statement of financial position. The omission is fatal. In [Dune Packaging Limited v Korara Highlands Tea Factory](#) (Insolvency Cause E005 of 2023) [2024] the court held as follows in respect of such an omission: -

“It is therefore the finding of this Court that the Company’s refusal and/or failure to settle the decretal amount is prima facie evidence that the Company is unable to pay its debt. However, this court prior to making any determination is duty bound to ensure that the insolvency petition filed against the Company is based on the process and procedure prescribed by the law...

It is the finding of this Court that the present petition does not satisfy all the foregoing requirements in Regulation 77 (B) (1) of the [Insolvency Rules](#).

17. This Court is alive to the wide powers given to it by section 427 of the [Insolvency Act](#) which provides that: - “On hearing a liquidation petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit...” Having failed to comply with the provisions of Regulation 77B, this Court finds that the Petition is unfounded and is incompetently before this Court. The same is hereby ordered struck out with no orders as to costs.” (Emphasis mine)
15. Guided by the above law, I find that the Petition is fatally defective because the Court may not ascertain if the Petitioner meets the criteria in Section 425 read together with Section 384 of the [Insolvency Act](#).
16. Further to the above, Section 427(3)(4) of the [Insolvency Act](#) requires the Court to consider whether liquidation is just and equitable, and in doing so, further consider whether other remedies exist as an alternative to liquidation. ARM submitted, and the Petitioner did not deny, that through its subsidiary, Kings Pride Properties Limited it approached ARM with an offer to offset part of the debt owed to ARM by transferring a 3-bedroom apartment at Parklands Luxury Gardens on Land Ref No. 209/118/28. The said offer is indicative that there may still exist various alternatives for the company to explore, and to settle its debts, without resorting to liquidation. It is established that where it is found that alternative remedies exist, the Petitioner is not entitled to a winding up order.



17. In this regard, in *Synergy Industrial Credit Limited –versus- Multiple Hauliers (E.A) Limited* [2020] eKLR, Majanja J. while citing with approval the decision in Re: In the Matter of Leisure Lodge Limited stated that: -

“Where there are found to be alternative remedies, the Petitioner is not entitled to a winding up order. In my judgment the Petitioner is and will be acting unreasonably if he turns around to reject his own proposal to have the price of his shares determined in whatever forum customarily available for the determination of such matters and the value of shares.”

18. The above decision is in line with the objectives and purpose of the *Insolvency Act* which leans towards rescue of viable businesses rather than resort to liquidation, described by courts as a 'corporate death sentence' (*Kenya Power v National Cereals* [2001]).

19. Guided by the above, and based on the record before me, I find that the Petitioner has not demonstrated credible evidence of insolvency. I reiterate that no statement of affairs or financial statements were provided to show that liabilities exceeded assets. In my view, bare assertions are insufficient to invoke liquidation, a drastic remedy in circumstances that may prejudice creditors or be used to defeat the rights of creditors, as was submitted by Ecobank Kenya.

20. Having found that the Petition is defective, and in any event, without merit for the reasons stated above, the question of whether or not the Bank's security interests should be excluded in the event of a liquidation order are moot. I will not address that issue.

Conclusion and Disposition

21. Based on the reasons set out above, I find and hold that the Petition dated 7th November, 2022, is without merit. The same is dismissed with costs to the Creditors.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 28TH DAY OF JULY, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Sakina

.....for Applicant

.....for Respondent

