



Turner & Hernshaw Investments v Hygiene & Safety Systems Limited (Insolvency Petition E005 of 2023) [2025] KEHC 10909 (KLR) (Commercial and Tax) (24 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10909 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E005 OF 2023**

BK NJOROGE, J

JULY 24, 2025

BETWEEN

TURNER & HERNSHAW INVESTMENTS PETITIONER

AND

HYGIENE & SAFETY SYSTEMS LIMITED RESPONDENT

JUDGMENT

1. This is a Judgment in respect of a Liquidation Petition filed by the Petitioner dated 30th September, 2022.

Background Facts

2. The Petitioner, Turner & Hernshaw Investments, filed a Petition seeking a liquidation order against Hygiene & Safety Systems Limited. The Company is alleged to owe the Petitioner Kshs.490,200. This is on account of financial consultancy services rendered between December 2016 and March 2018. Despite invoicing for the services rendered and repeated demands for payment, the Company has failed to settle the debt. That payments were due for periods ranging from immediate payment to payment periods of thirty (30) days. It has thus breached the express and implied terms of their agreement.
3. The Petitioner argued that the Company is insolvent and incapable of settling its debts. That it failed to act on a Statutory Demand dated 4th October 2021 under Section 384(1) and 425(1)(b) of the [Insolvency Act](#). The Company did not respond or pay within the stipulated 21-day notice period. Additionally, the Petitioner holds no security over the Company's assets. Thus, further demonstrating the Company's inability to fulfill its financial obligations and justifying the call for liquidation under Section 423 of the [Insolvency Act](#).



4. The Petitioner maintained that the debt owed to it by the Company is within the prescribed insolvency level in accordance with the *Insolvency Act* and the provisions under Sections 384(1)(a) and 424(1)(e) of the *Insolvency Act*. The provisions state that a Company may be liquidated due to its inability to pay its debts. That debt is specified as Kshs100,000/= or more. The Petitioner is satisfied that the Company has met the required threshold to be liquidated. That therefore, Section 423 of the Act empowers this Court to supervise the liquidation of a company registered in Kenya.
5. The Petitioner prayed that;
 - a. Hygiene & Safety systems Limited be liquidated by the Court under the provisions of the *Insolvency Act* No. 18 of 2015.
 - b. The cost of this Petition be granted to the Petitioner and be paid out of the assets of the company.
 - c. Any other order may be made as the court deems just in the premises.

Issues for Determination

6. The Court has considered the Petitioner's submissions alongside the Petition and the only issue for determination is;
 - a. Whether the Respondent company should be liquidated.

Analysis

7. On the 4th of October 2021, the Petitioner issued the Respondent with a Winding Up notice pursuant to Section 17(3) of the *Insolvency Act* No. 18 of 2015 and a demand for payment of Consultancy services of Ksh.490,200 owed to the Petitioner.
8. The aforesaid notice was served on the Respondent on the 7th October 2021; however, despite service, the Respondent did not respond or pay the sums owed to the Petitioner.
9. The Petitioner relied on Section 17 (3) of the *Insolvency Act* which provides that a Debtor is unable to pay a debt or has no reasonable prospect of being paid when the debt is payable immediately and notice has been served for which 21 days have lapsed without compliance with the demand or setting it aside. The Court notes that this provision is applicable with respect to physical persons as opposed to companies as is the case herein.
10. The applicable provision is Section 384 of the Act which states as follows;
 384. The circumstances in which a company is unable to pay its debts
 - (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).

11. In summary the above section provides for circumstances in which a company is unable to pay its debts. It includes amongst others if a creditor to whom the company is indebted for Kenya Shillings One Hundred Thousand (Kshs.100,000/=) 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.

12. Further, Section 424 of the Act provides the circumstances under which the Court may liquidate a Company. It states, at the material part, as follows:

424. Circumstances in which company may be liquidated by the Court

(1) 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;

.....

(e) the company is unable to pay its debts;

13. Section 423 (1) of the *Insolvency Act* vests the exclusive jurisdiction on the High Court to supervise the liquidation of Companies registered in Kenya.

14. It is undisputed that the Petitioner provided Consultancy services to the Respondent Company on various dates between 31st December 2016 and 12th March 2018. The Petitioner would bill the Respondent on a monthly basis. However, the Respondent has failed to settle the debt owed to the Petitioner, amounting to Kenya Shillings Four Hundred and Ninety Thousand (Kshs.490,200/=) since 12th March 2018.

15. It is notable that despite issuance of the statutory notice of demand and gazette of the insolvency Petition, the Respondent has failed or neglected to repay the debt owed. Therefore, it is evident that the Respondent is unable to pay its debt and ought to be liquidated.

16. In addition, the Respondent has failed or neglected to comply with or set aside the said Statutory demand within twenty-one (21) days.

17. Therefore, the Court concludes that the Respondent is unable to pay its debts; the Court sees no reason not to grant an order of liquidation.

18. In light of the above, the Petition is allowed and a liquidation order granted.

19. Section 427 of the Act provides that on hearing a liquidation Petition the Court may make a raft of orders including dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit. However, the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets. The discretion that the Court enjoys in this regard is not unlimited. It has to be exercised judiciously. Section 427 empowers the



Court to make orders for the liquidation of a company. This power is discretionary. As Caney J said in *Rosenbach & Co (Pty) Ltd v Singh's Bazaar (Pty) Ltd*;

“The Court has a discretion to refuse a winding-up order ...but it is one which is limited where a creditor has a debt which the company cannot pay; in such a case the creditor is entitled, *ex debito justitiae*, to a winding-up order.”

Determination

20. The Court is persuaded that its is fair and just to grant the orders sought and proceeds make the following orders: -
- a. Hygiene & Safety systems Limited be liquidated by the Court under the provisions of the *Insolvency Act* No. 18 of 2015.
 - b. That the Official Liquidator be and is hereby appointed to take over management of Hygiene & Safety Systems Limited.
 - c. The cost of this Petition be granted to the Petitioner and be paid out of the assets of the company.
21. It is so ordered.

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

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Atukunda for the Petitioner

N/A for the Respondent.

Mr. Luyai – Court Assistant

