



**Waigwe v Pamofine Trading Limited (Insolvency Cause E061 of 2023)
[2025] KEHC 10058 (KLR) (Commercial and Tax) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10058 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E061 OF 2023**

PM MULWA, J

JULY 10, 2025

BETWEEN

MARY MUTHONI WAIGWE PETITIONER

AND

PAMOFINE TRADING LIMITED RESPONDENT

RULING

1. This insolvency cause arises from the Petitioner's statutory demand dated 31st May 2023 served upon the Respondent/Debtor for the sum of Kshs. 40 million being loan advanced to the debtor on two instalments pursuant to two loan agreements entered into between the Petitioner and the Debtor. The Respondent breached the terms of the loan agreement and defaulted in the repayment, leading to the creditor issuing the statutory demand. The Respondent/Debtor has now filed the application dated 16th June 2023 seeking to set it aside and stay further intended proceedings in the liquidation petition.
2. The application is filed pursuant to Regulations 16(1) and 17(1) of the Insolvency Regulations 2016. The application is supported by the affidavit of Samuel Gutu Maina in his capacity as the Debtors' director, sworn on 16th June 2023. The Creditor/Petitioner opposes the application through her affidavit sworn on 18th July 2023. The parties also filed written submissions to support their positions in the matter.
3. The Respondent's principal ground for seeking to set aside the statutory demand is that the debt is disputed. It is contended that the Respondent has made substantial repayments towards the loan amount and should be granted an opportunity to adduce evidence to demonstrate the same.
4. The main issue for determination is whether the court should set aside the statutory demand. A statutory demand is ordinarily issued where a company is unable to pay its debts as per the provisions of Section 384(1) of the Company Act.



5. Regulations 16 and 17 of the Insolvency Regulations provide an outline of the grounds for setting aside a statutory demand and the procedure to be followed once it has been issued. The provisions state, in part, as follows:

16. Application to set aside statutory demand

(1) The debtor may, apply to the Court for an order to set aside the statutory demand—

- a. within twenty-one days from the date of the service on the debtor of the statutory demand; or
- b. if the demand has been advertised in a newspaper, from the date of the advertisement's appearance or its first appearance, whichever is the earlier.

(2) Subject to any order of the court under regulation 17(7), time limited for compliance with the statutory demand shall cease to run from the date on which the application is lodged with the court.

Regulation 17(6) on hearing of application to set aside statutory demand states that;

The court may grant the application if—

- a. the debtor appears to have a counterclaim, set-off or cross-demand which equals or exceeds the amount of the debt or debts specified in the statutory demand;
- b. the debt is disputed on grounds which appear to the court to be substantial;
- c. it appears that the creditor holds some security in respect of the debt claimed by the demand, and either paragraph (6) is not complied with in respect of the demand, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
- d. the court is satisfied, on other grounds, that the demand ought to be set aside.

6. In determining an application to set aside a statutory demand, Courts have to determine whether the applicant has established either, or all the grounds set out under Regulation 17(6). In the instant application, the Respondent pegs its application on the second ground, that the debt is disputed on substantial grounds. It is trite that in determining whether a dispute is substantial, the court must be satisfied that the dispute is bona fide and based on real and tangible material, and not a mere denial of indebtedness.

7. Upon perusal of the supporting affidavit, I note that the Respondent has made general averments that it has repaid a significant portion of the debt. However, no documentary evidence, such as bank statements, acknowledgement receipts, payment schedules, or reconciled accounts, has been provided to substantiate the alleged repayments. In essence, the Respondent merely asserts repayment without any evidentiary backing.

8. It is also noted that the Court had previously afforded the Respondent opportunities to settle the outstanding amount or engage in reconciliation with the Petitioner. Despite this indulgence, no



material progress was made, and no reconciled statements were filed. This undermines the credibility of the Respondent's claim of having made substantial repayment.

9. It bears emphasis that a mere promise to adduce evidence at a later stage cannot suffice to displace the statutory demand. The evidential burden lies with the applicant to demonstrate, by credible and contemporaneous documents, that the debt is indeed disputed on substantial grounds.
10. In the absence of such evidence, I am not persuaded that the Respondent has raised a bona fide or substantial dispute. Consequently, the application fails to meet the threshold set under Regulation 17(6)(b) of the Insolvency Regulations, 2016.
11. In the result, I find no merit in the application dated 16th June, 2023. The same is hereby dismissed with costs to the Petitioner.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Buluma h/b for Mr. Kabugu for Petitioner

Mr. Muhatia Pala for Respondent

Court Assistant: Carlos

