



REPUBLIC OF KENYA



**In re Liquidation of Famous Decorators Ltd (Insolvency Cause E029 of 2020)
[2024] KEHC 5271 (KLR) (Commercial and Tax) (19 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5271 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E029 OF 2020**

MN MWANGI, J

APRIL 19, 2024

JUDGMENT

1. Before me is a liquidation petition dated 11/12/2020 filed under Section 425 of the *Insolvency Act*. The petition was filed by Sibtain Jafferli Shivji and Tahera Sshivji the directors of Famous Decorators Ltd (hereinafter the company).
2. The petition is accompanied by verifying and supporting affidavits sworn by the petitioners on 11/12/2020; a special resolution dated 19/11/2020 by members of the company resolving to liquidate the company; a certificate of compliance dated 11/12/2020 indicating that the company submitted to the Official Receiver the prescribed forms and paid the mandatory deposit of Kshs.40,000/- towards expenses of the said Official Receiver and a list of the company's unsecured creditors.
3. In the supporting affidavit, the petitioners averred that the company was incorporated on 4/12/1996 and was involved inter alia in the business of house decorations, interior design, furniture making and the manufacture of fittings.
4. The directors deposed that the company is indebted to 21 unsecured creditors in sum of Kshs.6,703,722.70 and was facing a claim of Kshs.1,179,800.00 on account of medical claims and compensation arising from workplace injuries suffered by a former employee.
5. On 31/3/2023, counsel representing the petitioners informed this Court that the company negotiated and reached a settlement with its secured creditors, but the issue of the unsecured creditors remained unresolved.
6. During the hearing of the petition in Court on 12/7/2023, one of the petitioners/directors of the company, Mr.Sibtain Jafferli Shivji, testified that a special meeting of the company was held on 19/11/2020 whereby it was resolved to liquidate the company.
7. He further testified that the company had an issue with payment of suppliers and that the company owed Kshs.6,703,722.70 and did not have any assets and was insolvent. It was his evidence that the company has not been operational for about 2 years and had no staff.



Analysis And Determination.

8. The petitioners filed undated written submissions to canvas their petition. It was submitted that the company ran into severe financial problems due to lack of business in the three years preceding the filing of the petition. It was stated that the company owned two parcels of land which had since been realized by its secured creditors.
9. It was submitted that the company was indebted to its unsecured creditors but the asset base of the company could not support its indebtedness and therefore the company is insolvent.
10. The instances under which a Company may be liquidated by the Court are provided for under Section 424(1) of the *Insolvency Act*, 2015 (the Act) which states 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.” (emphasis added).
11. Section 384 of the *Act* provides the circumstances in which a company may be deemed as being unable to pay its debts in the following words:

“(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).
 3. The insolvency regulations may increase or reduce the amount specified in subsection (1)(a)." (emphasis added).
11. Section 425(1) of the said Act states in part:

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

 - (a) the company or its directors;"
12. Section 427(1) of the Act states:

"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."
13. The petitioners as the sole directors/members of the company filed the instant liquidation petition on the grounds that the company is unable to pay its unsecured creditors. A special resolution dated 19/11/2020 was passed in a general meeting by the members of the company resolving to have the Court liquidate the company. The resolution is annexed as exhibit FDL 9 in the petitioners' supporting affidavit.
14. The record indicates that the petitioners reached a settlement with its secured creditors and only its unsecured creditors remain unpaid. A list of unsecured creditors and the amounts owed to them is annexed as exhibit FDL 7(a) in the petitioners' supporting affidavit. According to the list and the testimony of Mr. Shivji, the total amount owed to unsecured creditors is Kshs.6,703,722.70.
15. The unsecured creditors were served with notices via email of the mention and hearing of the petition. This is evidenced by the affidavits of service sworn on 18/5/2023 and 6/7/2023. Despite this, none of the creditors opposed this present liquidation petition.
16. *[In Re Ukwala Supermarket Limited](#)* [2019] eKLR, the Court stated thus:

"In any petition brought for the purpose of liquidating a company, the court has the discretion once the petitioner has established the right to bring a petition and the grounds



alleged, to make or deny the order sought. By the same vein, the court also has inherent jurisdiction to strike out any petition which is bound to fail or is an abuse of the process of the court.”

17. In this instance, the petitioners’ petition for liquidation of the company on grounds that it is unable to pay its unsecured creditors is uncontroverted. The company’s members and/or directors resolved to liquidate the company and the Court is satisfied that the company is unable to pay its debts as it has no assets and is no longer in operation.

As such, this Court finds merit in the liquidation petition and hereby makes an order for liquidation as prayed for in the petition. The Official Receiver is appointed the liquidator of company, Famous Decorators Ltd.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 19TH DAY OF APRIL, 2024.

JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:

No appearance for the petitioners

No appearance for the respondents

Ms B. Wokabi – Court Assistant.

