



**Yusuf & another (Suing as Administrators of the Estate of Ibrahim
Ahmed -Deceased) v Mbugua (Insolvency Notice E119 of 2022)
[2024] KEHC 11025 (KLR) (Commercial and Tax) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11025 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY NOTICE E119 OF 2022
JWW MONG'ARE, J
SEPTEMBER 19, 2024**

BETWEEN

**SAHRA KHALIF YUSUF 1ST JUDGMENT CREDITOR
ABDISAMAD IBRAHIM AHMED 2ND JUDGMENT CREDITOR
SUING AS ADMINISTRATORS OF THE ESTATE OF IBRAHIM AHMED -
DECEASED**

AND

SIMON MBUGUA JUDGMENT DEBTOR

RULING

1. Before the Court is the Judgment Debtor's Notice of Motion dated 22nd July 2022, seeking in the main the following orders:-
 1. That the statutory demand dated 6th July 2022 **be set aside.**
 2. That the Court be pleased to declare that the Statutory Demand as defective for being filed by strangers who lack locus before this Court.
 3. That the Court be pleased to declare the Statutory Demand to be of no legal effect by dint of the reason that the monies claimed for under the demand were fully paid to the Creditor by the Applicant and that there is no debt owed to the Creditor or his estate.
2. The Application is based on the grounds set out in the annexed affidavits sworn by the Applicant on even date. In summary, the grounds are that:-



1. The Statutory Demand has been filed without locus by strangers who are the alleged administrators of the estate of the Deceased.
2. No evidence has been rendered to prove that the alleged administrators have authority from the Succession Court to file the demand.
3. The Applicant paid all monies being claimed under the Notice by the said administrators through instalments, as follows:-

| Date | Amount |
|---------------------------------|-----------|
| 14 th August 2015 | 2,000,000 |
| 8 th September 2015 | 1,050,000 |
| 22 nd December 2015 | 2,000,000 |
| 18 th March 2016 | 500,000 |
| 9 th May 2016 | 400,000 |
| 17 th September 2016 | 800,000 |
| Total | 6,970,000 |

4. The Judgment Debtor had requested him to be paying the money in cash which he either paid directly or was delivered to the Judgment Debtor by Peter Muchiri or Kevin Malinga who used to run errands for them to deliver as was mutually agreed.
 5. He was served with the Statutory Notice on 19th July 2022 after the deceased's death and 8 years after the award of costs on 27th January 2015.
 6. That there is mischief since two other parties in the case/ Ruling relied on by the alleged Administrators of the Judgment Debtor have not been cited in this matter.
3. In response, the Administrators of the Judgment Creditor's Estate filed a replying affidavit sworn on 17th April 2023 and a supplementary affidavit sworn by Stephen Owino on 19th July 2024. The main depositions were that:-
1. The Judgment Creditor was a petitioner in HC Election Petition No. 35 of 2008, Ibrahim Ahmed v Simon Mbugua & 2 Others and was at all material times represented by the firm of S. O. Owino & Associates Advocates, while the Judgment Debtor was the 1st Respondent.
 2. The Judgment Creditor was successful in the suit and was awarded costs against the three respondents following which he lodged in the said proceedings two Bills of Costs for taxation.
 3. The bill of costs dated 10th April 2012 was against the Judgment Debtor while the Bills of Costs dated 16th August 2012 was against the Judgment Debtor and the 2nd and 3rd Respondents jointly and severally.



4. In a Ruling delivered on 27th January 2015, the taxing officer taxed the bills at Kshs. 2,379,993.00/- and Kshs. 13,992,444.00/- respectively.
5. The Statutory Demand is in respect of the Bill of Costs dated 10th April 2012 which was brought against the Judgment Debtor only.
6. There is no evidence of receipt of sum of Kshs. 6,970,000.00/- allegedly paid by the Judgment Debtor to the Judgment Creditor, which exceeds the amount claimed in the Statutory Demand of Kshs.6,183,859.25/-. The Judgment Debtor's position is that it had paid Kshs. 3,050,000/- more than the amount then due as per the Certificate of Taxation dated 19th October 2015 of Kshs. 2,379,993.00/-. In the notice to show cause dated 15th May 2018, the amount due was Kshs. 3,803,362.00/-.
7. After the delivery of the said Ruling, the Judgment Debtor filed a reference application date 5th February 2015 opposed by the Judgment Creditor which has not been prosecuted to date.
8. On 15th May 2018, the Court issued a notice to show cause why execution should not issue upon the Judgment Debtor upon the application of the Judgment Creditor.

Analysis and Determination

4. I have considered carefully the Application, rival affidavits, written submissions and the evidence filed by the parties to the present suit. I note that the issue that arise for determination is “whether the applicant has made a case for the setting aside of the statutory demand.”
5. The grounds on which the Court can set aside a statutory demand are set out under Regulation 17(6) of the Insolvency Regulations as follows:-
 - “ 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. The Judgment Debtor urged the Court to set aside the statutory demand as it has been filed without authority. The Administrators of the Estate of the Judgment Creditor (Ibrahim Ahmed) produced a copy of the limited grant of letters of administration ad litem dated 22nd June 2022. Therefore, I am satisfied that they filed the statutory demand dated 6th July 2022 with authority as administrators contrary to the Judgment Debtor's position. They also produced a copy of the Ruling dated 27th January 2015 in respect of the two Bills of Costs dated 10th April 2012 and 16th August 2012 taxed at Kshs. 2,379,993/- and Kshs. 13,992,444/- respectively. In the Ruling, the Judgment Debtor was the 1st Respondent in the Petition. It is clear that there was an amount owing from the Judgment Debtor that precipitated the filing of the statutory demand for Kshs. 6,183,859.25/- against him. Therefore, I am not convinced that there is any mischief in filing the Statutory Demand.



7. The Administrators also produced a copy of the Judgment Debtor's reference application dated 5th February 2015 against the Ruling and the notice to show cause why execution should not be granted dated 15th May 2018 in relation to the settlement of the decretal sum of Kshs.3,803,362/-. The Judgment Debtor failed to demonstrate that it has been diligent in prosecuting its reference application which was already responded to.
8. At present, the Judgment Debtor's position is that it has fully settled the amount owing through cash payments made directly to the Judgment Creditor or sent through their errand persons when he was still alive. He produced bank statements to show that monies which were paid were withdrawn from his bank accounts on the dates that the payments were made. He also produced affidavits sworn by his errand persons, PETER MUCHIRI and KEVIN MALINGA on 25th July 2022. However, the evidence is not sufficient to ascertain that the Judgment Creditor received the amounts. Hence, I am not persuaded that the Judgment Debtor has fully offset the debt.
9. Accordingly, the Judgment Debtor's application dated 22nd July 2022 is dismissed for want of merit with costs to the Petitioner/ Judgment Creditor.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF SEPTEMBER, 2024.

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Ms. Shikali holding brief for Mr. Kiprop for the Judgment Debtor/Applicant.
2. Mr. Osodo for the Decree Holder/Respondent.
3. Amos - Court Assistant

