



**Invesco Assurance Company Limited v Gichuki King'ara  
& Company Advocates (Insolvency Notice E084 of 2023)  
[2024] KEHC 13632 (KLR) (Commercial and Tax) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13632 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY NOTICE E084 OF 2023  
A MABEYA, J  
NOVEMBER 7, 2024**

**BETWEEN**

**INVESCO ASSURANCE COMPANY LIMITED ..... APPLICANT**

**AND**

**GICHUKI KING'ARA & COMPANY ADVOCATES ..... RESPONDENT**

**RULING**

1. The applicant's application dated 7/8/2023 sought several orders; a stay of all further proceedings and execution in Misc E562/2019, a declaration that the warrants of attachment taken out by the respondent are void, delivery of accounts by the respondent on all money received from the applicant, the restraining of the respondent from proceeding with the intended Insolvency Petition and/or advertising the petition. Finally, that the statutory demand by the respondent be set aside and /or vacated.
2. The background to the application was that the respondent represented the applicant in various proceedings and later filed its bills of costs. The respondent contended that a consent was recorded in *HC Misc E 562/2019* where parties compromised the total costs due in all proceedings and settled the amount at Kshs. 13,300,000/=. The respondent then served a statutory demand claiming the said amount and filed the application dated 3/7/2023 before this Court.
3. The present application was brought under the provisions of section 428, 429 and 430 of the *Insolvency Act*, Rules 16 and 17 of the *Insolvency Regulations*, Rule 18 and 20 of the *Advocates Accounts Rules* and Section 3A of the *Civil Procedure Act* and Order 20 Rules 2, 3 and 4 of the *Civil Procedure Rules*.



4. The application was supported by the affidavit of Emmaculate Machuki. The grounds for the application were that; the Insolvency proceedings having been commenced pursuant to section 431 (3) of the *Insolvency Act*, the assets of the company were subject to a moratorium.
5. That the warrants of attachment were void. That the respondent had not disclosed other claims between, that the statutory demand had not been served on the other courts. That the claim had not yet been proved and that if a liquidation order is made, it will unjustly favor the respondent. That advertising the Petition for insolvency will prejudice the applicant whose creditors will move to recover debts in haste and bring the company to its knees. That the applicant was willing to pay the outstanding amount but subject to audit. That the decrees issued in the listed causes and the decretal sum of Kshs 13.3 million had been settled. That the respondent had received Kshs 25 million to pay Gachiri Kariuki & Company Advocates but only paid Kshs 10 million thereby retaining Kshs. 15 million which was over above the amount claimed.
6. The application was opposed by the respondent vide a replying affidavit of Peter Kingara sworn on 29/9/2023. He deposed that the amount due was in respect of various advocate-client bills of costs. That the respondent had represented the applicant in various matters and raised the subject bills of costs after the applicant had failed to settle fee notes raised by the respondent. That the parties agreed to settle the matter in the sum of Kshs. 13,300,000/=.
7. That a consent was adopted in Miscellaneous Application No E 562 of 2019 *Gichuki Kingara Advocates v Invesco Assurance Co Ltd* with terms set out thereon. The applicant was to pay installments of Kshs. 250,000/- every fortnight but had only paid Kshs 500,000/=. The applicant could therefore not deny the debt as the consent had not been set-aside.
8. He explained that the matters filed by Gachiri Kariuki Advocate were filed in Nyeri court and were separate from the matters compromised in Miscellaneous Application No E 562 of 2019. The parties submitted on the application which have been considered.
9. Having considered the application and written submissions, the issues for determination are; whether the Court should order a stay of execution, whether the applicant was in contempt and whether the insolvency notice and warrants were legal.
10. Before determining these issues, I think it is proper to indicate that since the hearing of the application, the applicant has been placed under statutory management by the regulator. In view thereof, I think the matters raised in the application are moot in the circumstances.
11. However, since this is not the last Court, I will make a determination on the issues raised incase any of the parties seek to appeal.
12. There is no dispute that there is a consent order which has not been set aside. That consent resulted in a decree that is capable of execution. In my view, since the consent had not been set aside, the respondent's debt cannot be assailed. It was entitled to execute the same.
13. The statutory notice that gave rise to the present proceedings cannot be said to have been frivolous. That being the case, the lodging of the insolvency proceedings cannot be said to have been without a basis. In the circumstances, the contention that the proceedings were to favor the respondent have no basis. The execution and warrants were in order and nothing illegal about them.
14. On whether the respondent was entitled to apply for insolvency, the answer is in the affirmative. Section 424 of the *Insolvency Act* ("the Act") provides for the circumstances in which a company may be liquidated by the Court. These include when the company is unable to pay its debts;



15. Section 384 (1) (2) of the [Act](#) sets out the circumstances under which a company can be declared as being unable to pay its debts. The section provides: -

- “ 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.”

16. Section 425 (b) of the [Insolvency Act](#) lists the persons eligible to apply for liquidation to include a creditor or creditors. There is no dispute that the consent order recorded in Miscelleneous Application No E 562 of 2019 has not yet been set aside. The respondent was the beneficiary of that order and therefore a creditor. It was entitled to lodge the insolvency proceedings having properly issued a statutory demand.

17. Lastly, on whether the Court should set aside the statutory demand dated 3/7/2023, the answer is in the negative. The demand was a regular notice issued under section 348 (1)(a) of the [Act](#). The debt is not in dispute since the decree in favour of the respondent has not been set aside.

18. In the upshot, I find the application to be without merit and the same is dismissed with costs to the respondent.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

