



REPUBLIC OF KENYA



**KENYA LAW**  
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**Jubilee Insurance Company Limited v Lubisia & others (Insolvency Cause E001 of 2023) [2024] KEHC 15893 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15893 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
INSOLVENCY CAUSE E001 OF 2023  
S MBUNGI, J  
DECEMBER 17, 2024**

**BETWEEN**

**JUBILEE INSURANCE COMPANY LIMITED ..... APPLICANT**

**AND**

**WILBERFORCE LUBISIA & OTHERS ..... RESPONDENT**

**RULING**

1. The applicant filed a motion under Certificate of Urgency seeking the following orders:
  - a. Spent
  - b. That the Honorable Court be pleased to stay the proceedings herein scheduled to take place on the 8<sup>th</sup> February, 2024 pending the hearing and determination of this instant application.
  - c. That the Honorable Court be pleased to strike out and /or set aside the statutory demand dated 20<sup>th</sup> September, 2023.
2. The application was premised on the grounds the statutory demand was procedurally defective since the creditor or their agent did not execute it. The applicant stated that the company was not in any way indebted to the purported creditors and that the creditors have not demonstrated that the company owes them. It was submitted that the proceedings in the trial court were against Mumias Sugar Company limited and not the applicant.
3. The application was supported by an affidavit sworn by Mary Ng'ang'a who stated that she was the legal officer of the applicant. She stated that the creditors called upon the applicant to satisfy a debt purported to have fallen due from Kakamega CMCC Nos. 543,547, 553, 550, 546, 544 and 545 all of 2012. The applicant filed preliminary objections to the claims lodged by the creditors and they then withdrew the matters. She further stated that the creditors have indeed confirmed that the judgments subject to the proceedings before this Honorable court were against Mumias Sugar Company Limited.



4. The court directed that the application be canvassed by way of written submissions.

### **Respondents' Case.**

5. The respondent submitted that the main suit's judgment, where the defendants being Mumias Sugar and Kassim Keya were found 100% liable has never been challenged or appealed against. The petitioners were all awarded Kshs. 150,000/- each together with costs and interests.
6. It was the petitioners'/respondents' submission that Mumias Sugar Company Limited had taken out insurance for its employers with Jubilee Insurance Company Limited the creditor/applicant herein. The said insurance company instructed L.G Menezes and company Limited to act for the defendants in the said primary suit and the firm also entered into a consent with the petitioners on the costs of the suit on behalf of the insurance company.
7. The respondents further submitted that the petitioners were unable to pursue execution proceedings against Mumias Sugar Company Limited as the company has since gone under receivership. They were also unable to get compensation from Kassim Keya as he has since gone underground due to the numerous suits against him.
8. Further, they submitted that the insurance company did not deny the said debt, but had instead shifted the blame to the 2<sup>nd</sup> defendant who was the owner of the suit motor vehicle and had advised the petitioners/respondents to seek compensation from INVESCO Insurance Company Limited, the insurers of the motor vehicle yet the said suits were filed under the Workman Compensation Act and not under Motor Vehicle Third Party Risks Acts, cap 405.
9. The petitioners also averred that the judgment was against the petitioners' employer, Mumias Sugar Company Limited and Kassim Keya, hence the company's insurer being Jubilee Insurance Company Limited is obligated to settle the said awards under the Workman Compensation Act.
10. They stated that since the company has been unable to pay the debt herein within the required 21 days of service of the statutory notice, it should be liquidated as provided for under the [Insolvency Act](#). They referred the court to the case of [Kenya Artisans v Chemical & Allied Workers Union](#) [2021] eKLR.

### **Analysis and Determination.**

11. I have looked at the application, supporting affidavit, replying affidavit and submissions by the parties.
12. the statutory demand complained of dated 20.09.2023 was issued pursuant to Section 384 of the [Insolvency Act](#) which states:

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; 154 [Rev. 2021] Insolvency No. 18 of 2015



- (b) if execution or other process issued on a judgment, decree or order of any court in favor 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).
13. The applicant contends that the statutory demand was substantively and procedurally defective for the purported creditors did not execute the statutory demand. The applicant has not demonstrated how the statutory demand was defective.
  14. For the respondents/petitioners to issue a statutory demand they should have satisfied the conditions set out in Section 384 of the *Insolvency Act*.
  15. The petitioners/ respondents have not filed any evidence to show that the applicant owes them any money, or a court decree/judgment issued against the applicant in favor of the respondents/petitioners.
  16. The judgments issued in favor of the petitioners in CMCC Nos. 543,547, 553, 550, 546, 544 and 545 of 2012 were against Mumias Sugar Company Limited and Kassim Keya but not the applicant.
  17. The applicant had insured Mumias Sugar Company Limited workers under *Work Injury Benefits Act*, and the claims were brought under Workman Compensation Act.
  18. Unlike the Motor Vehicle Third Party Risks Acts, cap 405 Laws of Kenya, the Workman Compensation Act does not provide for filing of declaratory suits to compel an insurance company to settle claims sustained by employees of a company insured by an insurance company if the employees are injured because of their work.
  19. The respondents/petitioners having failed to produce any evidence showing that the applicant owes them any money and having failed to produce any court order ordering the applicant to pay them the claimed sums I find that there was no basis for issuance of the statutory demand by the petitioners/ respondents to the applicant therefore the statutory demand is set aside and the entire liquidation petition struck off with costs to the applicant/alleged debtor.
  20. Right of appeal 30 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 17<sup>TH</sup> DAY OF DECEMBER, 2024.**

**S.N MBUNGI**

**JUDGE**

In the presence of:

Ms. Shibanda for the respondents present online

Mr. Karanja for the applicant present online



Court Assistant – Elizabeth Angong’a

