



**Success Electronics and Transformer Manufacturing Ltd v Kilewah Electro- Hard & Electronic Ltd; Mwangi & another (Third party) (Insolvency Petition E034 of 2019) [2024] KEHC 15651 (KLR) (Commercial & Admiralty) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15651 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
INSOLVENCY PETITION E034 OF 2019  
JWW MONG'ARE, J  
DECEMBER 9, 2024**

**BETWEEN**

**SUCCESS ELECTRONICS AND TRANSFORMER MANUFACTURING LTD ..... PETITIONER**

**AND**

**KILEWAH ELECTRO- HARD & ELECTRONIC LTD ..... RESPONDENT**

**AND**

**SAMUEL GATHOGO MWANGI ..... THIRD PARTY**

**HYPERTECK ELECTRICAL SERVICES LTD ..... THIRD PARTY**

**RULING**

1. This ruling pertains to the application dated 1<sup>st</sup> March 2024, wherein the 2<sup>nd</sup> and 3<sup>rd</sup> Third Party/ Applicants seek orders to strike out the petition and the costs of the suit.
2. The application is premised on the grounds on the face of the notice of motion and is supported by the affidavits of SAMUEL GATHOGA MWANGI, sworn on 1<sup>st</sup> March 2024 and 10<sup>th</sup> June 2024. He depones that the 1<sup>st</sup> and 3<sup>rd</sup> parties, in shipping the solar lanterns from Malaysia, incurred significant costs. They were able to sell a few solar lanterns, while others remain in their warehouses, ready for collection by the petitioner. The petitioner has failed to exhaust all available remedies in resolving the dispute. The alleged debt is misleading to the court, and the 2<sup>nd</sup> Third Party is financially sound, with significant tenders currently being performed for clients.
3. The petitioner, through its director TAN WEI NENG, opposed the application via a replying affidavit sworn on 30<sup>th</sup> April 2024. He states that the petitioner delivered the consignment to the respondent,



who acknowledged receipt. He further avers that the costs listed by the respondent as expenses incurred are not relevant to the current dispute and are unrelated to the issues raised in the petition. The petitioner asserts that the core of the dispute concerns the outstanding obligations as per the agreement, and that the respondent's financial claims do not directly impact the primary issues at hand.

4. The application was heard through written submissions. The first and second third parties filed submissions dated 14<sup>th</sup> June 2024, while the petitioner filed submissions on 17<sup>th</sup> July 2024, both of which have been considered. The key issue for determination is whether the petition should be struck out.
5. The Applicants urge the court to strike out the petition, claiming it constitutes an abuse of the court process. In applications to strike out pleadings, the burden of proof lies with the applicant, who must demonstrate that it is clear and obvious that the pleadings amount to

**an abuse of the court process.**

6. The courts have consistently held that they will not strike out pleadings except in cases where there is a clear abuse of the court process. The power to strike out pleadings is an extraordinary remedy, and courts exercise this power cautiously. It should only be used when the pleading is manifestly defective, frivolous, or when it is evident that the claim is bound to fail. Absent such circumstances, courts are generally reluctant to dismiss a matter before it is heard on its merits. This position was affirmed in *Brahmbhatt v. Dynamics Engineering (1986) KLR 133*, where the Court of Appeal stated:

“... In an application to strike out a winding up petition, the Court should consider whether on the evidence, it is plain and obvious that the petition is bound to fail.”

7. In this case, the petitioner has presented significant evidence to substantiate its claim regarding the debt owed by the respondent. The first and second third parties dispute this debt and bear the burden of proving that the debt has been settled with the petitioner.
8. My finding is that, the petitioner is entitled to a fair trial, a fundamental principle of legal proceedings. This includes having its claims adjudicated based on the evidence presented during the trial. The success of the Petition can only be determined after hearing the parties. Striking out the petition would deprive the petitioner of its right to be heard, thereby undermining the principle of fair hearing, which is essential in judicial processes.
9. I find guidance in the case of *Yaya towers Ltd vs Trade Bank Ltd (in Liquidation) (2020) eKLR* where the court stated:-

“A plaintiff is entitled to pursue a claim in our courts however implausible and however improbable his chances of success, unless the defendant can demonstrate shortly and conclusively that the plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of the court, it must be allowed to proceed to trial”.

10. In my view, the courts must maintain judicial integrity by ensuring that decisions are made based on a comprehensive evaluation of all relevant evidence and arguments.
11. In light of the above, the Notice of Motion dated 1<sup>st</sup> March 2024 is found to be without merit, and the same is hereby dismissed with costs.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI VIRTUALLY this 9<sup>TH</sup> DAY of DECEMBER 2024**



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**J. W. W. MONGARE**

**JUDGE**

In the Presence of:-

1. Ms. Wameyo holding for Mr. Kuyo for the Petitioner.
2. N/A for the Respondent.
3. N/A for the 1<sup>st</sup> & 2<sup>nd</sup> interested Parties/Applicants.
4. Amos - Court assistant.

