



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
INSOLVENCY PETITION NO. E.002 OF 2020
IN THE MATTER OF THE INSOLVENCY ACT NO.17 OF 2015

AND

IN THE MATTER OF AN APPLICATION TO SET ASIDE A STATUTORY DEMAND

OLDONYO NAIRASHA ESTATES

(NAROK) LIMITED..... DEBTOR/APPLICANT

VERSUS

OCP KENYA LIMITED.....CREDITOR/RESPONDENT

RULING

The Debtor/Applicant filed a **Notice of Motion Application** dated **24th February 2020** seeking to set aside the Statutory Demand dated **17th January 2020** by the Creditor herein, brought under **Regulation 6 and 17 of the Insolvency Regulations 2016 and Section 384 of the Insolvency Act**.

The Applicant sought orders; -

1. That there be a stay of further proceedings of the liquidation Petition pending the determination of the Application.
2. The statutory demand dated **17th January 2020** be set aside.

The Application is supported by the affidavit of **Bhupinder Kaur Dhillon** and based on the grounds that; -

- a) On various dates in the year **2017** and **2018**, the Creditor sold and supplied fertilizer to the Debtor on credit, as at **26th September 2018**, the outstanding balance was **Kshs.58,238,783**.
- b) It was an established practice between the Debtor and the various suppliers of fertilizers that a substantial portion of the outstanding dues would be cleared post-harvest thus explaining why there was only a single payment of **Kshs.5,510,400** between **2nd March 2018** and **19th June 2018**.
- c) On **3rd July 2018**, the Creditor suspended operations owing to the accusations of fraud and supply of substandard fertilizers. Since the Creditor was not in operation, the Debtor made alternative arrangements for the supply of fertilizer thereby disrupting the budget of the next season but nonetheless paid **Kshs.18,506,400** leading to the outstanding amount of **Kshs.58,238,783** as at **26th September 2018**.
- d) The Debtor received a letter of offer dated **3rd January 2020** from the National Bank of Kenya (NBK) for the sum of **Kshs.100 million** which was to offset the said debt. **On 31st January 2020**, before the loan could be disbursed, the Creditor published on both Daily Nation and Standard newspaper a statutory demand claiming the sum of **Kshs.58,233,283**.
- e) As a result of the bad press relating to the insolvency Notice the Loan by NBK could not be processed.

f) On the night of **14th February 2020** one of the Debtor's directors **Kareendeep Singh Dhillon, the active director** of the debtor was murdered further complicating the making of further payments.

g) The debtor is willing to create a charge over one of its assets to the tune of the outstanding debt amount and further have the same cleared off post-harvest as has always been the established custom.

h) Since the publishing of the insolvency notice, the debtor has already paid **Kshs.23 million** to the Creditor and is proposing to settle the balance of **Kshs.35 Million** in four instalments as from the month of September upon harvesting of the produce.

The Applicant expounded on the following grounds;

The Applicant, their mother and the active director (deceased) are Directors of the debtor. The Executive Director was in charge of day to day operations of the Debtor and the Applicant took over after the unfortunate demise of the Active Director.

The Debtor experienced massive theft of Ksh 22, 400,000/- by staff and formed the basis of Criminal case in Narok Law Courts (as per copy of charge sheet attached) and also suffered severe drought in 2019.

The Debtor already engaged National Bank of Kenya for Ksh 100 million

facility as per letter of offer annexed of 3rd January 2020. The Statutory Demand published in print media on 31st January 2020 was bad press and hindered availability of the facility. The publication was malicious and amounted to economic sabotage, it brought and hardship that the debtor could no longer source funds from a ready financier.

The Debtor owns 600 acres of land in Narok worth over Ksh180,000,000/- and leases over 6000 acres from over 200 landlords with employment of 60 people work force. The Company has assets to offset the debt save for currently having a liquidity issue; the debtor had a favorable credit rating as per Standard Credit Report of 12th February 2020. The debtor cannot be considered to be insolvent as the value of assets exceed the debt and its conduct by having made substantial payments to offset the outstanding debt.

REPLYING AFFIDAVIT

The Application is opposed vide an affidavit dated **14th April 2020** and sworn by **Dan Okumu, Country Manager of the Creditor as follows;**

a) that the application is unmerited as it does not meet the threshold for setting aside a statutory demand and it is filed in bad faith as the debtor has intentionally misled the court by concealing material facts.

b) The debtor despite acknowledging the debt of **Kshs.58,233,283** and undertaking to settle the same by the end of **2018**, refused, failed and/or neglected to settle the said outstanding amount.

c) The Creditor attached debtor's Audit Confirmation Letter of **17th January 2019** confirming indebtedness.

d) The Creditor sent letter dated **22nd February 2019** (a copy was annexed) reminding the Debtor of the outstanding amount and there was no response.

e) The Creditor sent letter dated **9th April 2019** (a copy was annexed) reminding the Debtor of the outstanding amount and there was no response.

f) The Creditor sent letter dated **13th May 2019** (a copy was annexed) reminding the Debtor of the outstanding amount and there was no response.

g) The Creditor sent letter dated **1st July 2019** (a copy was annexed) reminding the Debtor of the outstanding amount and the Debtor responded on **3rd July, 2019**.

h) The debtor requested to settle the outstanding debt at the end of **November 2019** after expected harvest of wheat and maize and the Creditor agreed.

i) The Debtor failed to make any payment and the Creditor instructed their advocate who sent a demand letter of **3rd December 2019** and there was no response from the debtor.

j) The Creditor then filed the Statutory Notice in the High Court and demanded the payment of the debt within 21days. The Statutory Notice was served to the Director of the Debtor, the late Mr Karandeep Dhillon.

k) On **4th February 2020** the debtor convened a meeting with the creditor who promised to immediately commence payment. In this regard the Debtor paid the sum of **Kshs.20 Million** to the creditor and further undertook to provide a detailed payment plan while indicating that the outstanding debt would be cleared in full by **June 2020**.

l) On 7th February 2020 the Debtor paid an additional sum of **Kshs.3 Million** in part settlement of the debt. The debtor has since not made any further payment to settle the outstanding debt of **Kshs.35,211,763**. The debtors purported willingness to settle the debt is merely a delaying tactic that the debtor has consistently applied with notoriety since **2018**.

m) That with regard to the validity of statutory demand dated 17th January 2020, the same conforms with the format (**Form 6**) as prescribed under the **Insolvency Act, (Amendment) Regulations, 2018**.

n) It is inconceivable that despite the Debtor's acknowledgement of the debt and even in partially settling the debt to the tune of **Kshs.23,000,000** and further undertaking to pay the balance as deponed in the application, the Debtor still seeks to set aside the Statutory demand on the ground of purported procedural technicality as to form.

o) If the application herein is allowed and the prayers sought granted notwithstanding the Debtor's acknowledgement of the Debt, the Creditor stands to suffer insurmountable economic loss.

SUPPLEMENTARY AFFIDAVIT

The Applicant took issue with the statutory notice that it was contrary to **Section 384 (1) & (2) of Insolvency Act** and it is unjustifiable, improper and/or illegal insolvency as other methods of debt recovery have not been exhausted

DEBTORS SUBMISSIONS

1. Whether the debtor has met the threshold of setting aside a statutory demand

The Debtor relies on **Regulations 16 and 17** of the Insolvency Regulations and particularly **17(6)(d)** which provides that the court may allow the application if :

“The court is satisfied on other grounds that the demand ought to be set aside.”

The Court in ***Peter Munga Vs African Seed Investment Fund LLC [2017] eKLR*** held that it is evident when one reads paragraph (d) above that the grounds for the setting aside of a statutory demand are not limited by statute and it opens it up and gives the court a spacious discretion. It is certainly not possible to foresee all the instances which may properly fall under **paragraph (d) of Regulation 17**.

2. Would it be unjust for the statutory demand to give rise to insolvency proceedings in this particular case?

In ***Invesco Assurance Company Limited Vs Dama Charo Nzai and 57 Others [2019] eKLR*** the court noted that;

“It is a miracle for a company which a bankruptcy order has been made to resurrect from the bankruptcy graveyard.”

Such is the weight of the Creditors action of issuance of the statutory demand. It has begun the unjustifiable death process of the debtor. Liquidating a company is a draconian step which amounts to corporate execution (in ***Re Ukwala Supermarket Limited [2019]eKLR***). The starting of the liquidation process should only be allowed for companies that exclusively meet the requirements of liquidation and in accordance with **Part VI of the Insolvency Act**. A company is to be involuntarily liquidated for its inability to pay its debts. The debtor submits that after harvesting it is able to make good its debt and it is for this reason that the debtor had been supplied with fertilizers which are paid after the produce. Therefore, the debtor cannot be held as unable to pay its debts as they fall due.

In ***Printwell Industries Limited vs East African Educational Publishers and another [2018] eKLR*** the court held:

“In addition, there is no proof that the value of its assets is more than its liability to the Petitioner. Other than make a generalized averment that the amounts owed to it by its debtors is ‘way above’ the amount owed to the ‘Creditor’, the Company provides no specifics or proof of what would otherwise be considered as its assets.”

Unlike the position above, the debtor produced valuation reports for various properties whose value exceed the amount of liability to the creditor herein. The liquidation process is therefore premature.

The Debtor is capable of paying its debts and hence able to create a security for the amounts due the Creditor. Since the inception of the Debtor, it was actively managed by Karandeep Singh Dhillon who was the Executive Director. However, due to his untimely death the silent Directors had to rise to the occasion and start running the Debtor actively. In the circumstances, it is important to give an opportunity to new directorship to repay the loan.

CREDITORS SUBMISSIONS

1. Whether the application meets the requisite ingredients for setting aside a statutory demand?

The Creditor submits that whereas the **Insolvency Act, 2015** as read with the **Insolvency Regulations 2016 and the Insolvency Act (Amendment Regulations 2018)** make provision for setting aside statutory demand issued under bankruptcy proceedings, no such provision has been made in relation to written demands issued pursuant to liquidation of companies.

2. No jurisdiction has been donated to this court to determine an application to set aside a demand served upon a company (Debtor) pursuant to liquidation of companies. In *Kwale International Sugar Company Vs EPCO Builders limited & 2 others [2020] eKLR*, the Judge dismissed the application to set aside a statutory demand filed against a company with the following dictum; -

“Turning to the inapplicability of Regulations 16 and 17 of the Insolvency Regulations to the present application, the Respondent contended that the said regulations are only applicable to the bankruptcy proceedings in respect to natural persons and not the liquidation of a company. The said regulations stipulate as follows:

.....the reason I have set out the aforesaid provisions is to show that to the extent that the company relied on Regulations 16 and 17 that relates to bankruptcy of natural persons in the instant application, the application is incompetent and lacks merit as Regulations 77 and 78 of the Insolvency Regulations that are applicable for liquidation of Companies do not contain a corresponding provision for the setting aside of statutory demands issued to the companies.”

The Debtor has urged the Court to adopt the conditions set out in **Regulation 17(6)** of the **Insolvency Regulations 2016** in determining the Application herein but which as submitted above relate to bankruptcy of natural persons and not liquidation of companies. The Court may only allow an application to set aside a statutory demand if the debtor proves the conditions set out in **Regulation 17(6)**.

3. In *East Africa Cables Limited vs SBM Bank Limited [2020] eKLR*. Majanja J. while deciding on the issue of the disputed debt quoted *Mann vs Goldstein [1968] 2 All ER 769, Crus air Limited vs CMA Aviation Limited* stated; -

“The thread of running through these authorities is that in entertaining a petition to wind up a company on account of non-payment of debts, the court must be satisfied that the debt is not disputed on substantial grounds and is bona fide.”

The Creditor stated, upon being served with the statutory demand, the Debtor precipitously sought negotiations with the Creditor and tried to negotiate offsetting the debt. Pursuant to the said negotiations, and as confirmed in the Creditors replying affidavit the Debtor deposited a sum of **KShs.23 million**.

Since 2018, the Debtor has harvested its crop annually without fail but repeatedly refused and/or declined to settle the Creditor’s debt. The reluctance and/or failure to pay on the part of the debtor is intentional and not subject to the proceeds of the sale of the crop post-harvest season. There is therefore no guarantee that the debtor will settle the debt during the next harvest period as claimed.

The Creditor took the view, the failure to pay on the part of the Debtor is intentional and not subject to the proceeds of sale of the crop (post-harvest season). From the past dishonored promises, there is no guarantee that the debtor will settle the debt during the next harvest period. It is deducible that the Debtor’s promises aforesaid are aimed at decelerating the insolvency proceedings.

The Creditor asserted that the Debtor’s pleadings also confirm that it is seeking restructuring of the payment terms of the debt. This is *prima facie* evidence that it acknowledges being truly indebted to the Creditor. It is apparent from the general conduct of the Debtor that the filing of the instant application is an abuse of the due process of the court. The discernable intention is to forestall the Creditor’s right to file an insolvency petition and, in the process, buy time to negotiate terms of repayment of the debt.

The Creditor was of the opinion that the Debtor alleges in its submissions that it has assets that exceed the amount owing to the Creditor. In this regard, the Debtor has provided two properties whose aggregate valuation is **Kshs.36,650,000**. The value of the said properties merely covers the debt owing to the Creditor. This argument is premised on the assumption that the debt owing to the Creditor is the only debt that the Debtor has in its books. The Debtor has also intentionally omitted to submit its books of accounts and credit statement which may as well demonstrate that its debts exceed its total asset value.

It is the Creditors position that the Debtor has failed to secure the debt to its reasonable satisfaction. The intrusive provision under **Section 384** is that whatever proposal the Debtor comes up with, the same must be to the satisfaction of the Creditor. The Debtor has in the past made numerous proposals to settle the debt but failed to honor the said proposals. The Debtor cannot therefore compel the Creditor to acquiesce to the proposals submitted in its written submissions.

4. Whether the statutory demand is valid in terms of its format?

Section 384 (1)(a) of the Act outlines the requisite components of a demand in the case of liquidation of companies. It provides: -

“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 a 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”

The section lays emphasis on the substance of the statutory demand and does not dwell on the appearance of a valid statutory demand. The served statutory demand was drafted in strict compliance with the prescribed **Form 32E of the Insolvency Act (Amendment) Regulations 2018** and on filing in court was duly endorsed by the Deputy Registrar.

The Debtor alleges that the Statutory Demand should be set aside on the ground that the Creditor had not signed its signature. It is clear that a

statutory demand should only be signed by the Registrar of the High Court of Kenya after confirming the veracity of the debt from the supporting documents that accompany a statutory demand.

In *Re Kipsigis Stores Limited IP No. 14 of 2016 (2017) Onguto J eKLR* when dealing with the issue whether the Statutory demand posited thus,

“Clearly an application to set aside or vacate a statutory notice on the basis of invalidity should be looked at in the light of the full circumstances of the case, the notice should not be set aside on the basis of mere technicality. Rather regard should be had to all the circumstances including but not limited to whether the debt is owed as well as whether the overriding objective would be defeated by setting aside the notice. If no injustice follows from the consequences of non-compliance, then it would serve no purpose to set aside a statutory demand.”

This position was upheld in *East Africa Cables Limited (supra)* where the court declined to strike out the Insolvency Petition filed therein on the ground that the accompanying statutory demand was not endorsed by the Deputy Registrar and held the Statutory demand substantially complied with the **Form 32E of the Insolvency Regulations, 2018** and sets out all the requirements as set out under the **Insolvency Act, 2015**.

Debtor’s response to the creditor’s submissions.

Does the lack of express statutory provisions deny this court jurisdiction to do justice where it so demands?

ANALYSIS AND DETERMINATION

The issues for the determination:

- a) Whether the statutory demand is valid in terms of its format?**
- b) Whether the Statutory demand should be set aside?**

Whether the statutory demand is valid in terms of its format?

The Debtor alleges that the Statutory Demand should be set aside on the ground that the Creditor had not signed it. The Creditor contends that the Statutory Demand in question was signed by the Registrar of High Court after confirming the veracity of the debt from the supporting documents that accompanied it.

The relevant provision for Companies is to be found in **Regulation 77B** which was introduced by the **Insolvency (Amendment) Regulations, 2018** which provide;

“77B (2) The petition for liquidation shall be accompanied by the following documents –

- (a) a statutory demand in Form 32E set out in the First Schedule if the reason for petition is indebtedness; and***
- (b) A statement of financial position in Form 32 as set out in the First Schedule where necessary.”***

The formal requirements are set out by the law; **Section 384(1)(a)** of the *Act* and Regulation 77(b)(2) of Insolvency Regulations 2018, where contested it was cured by the position taken *In Re Kipsigis Stores Limited [2017]eKLR Insolvency Cause No. 14 of 2016 (supra)* Onguto J. while relying on *Re a Debtor (No. 1 of 1987) [1989] 2 All ER 46 supra* found that want of form maybe cured by considering the full circumstances of the case and not invalidated merely on technicality.

Whether the Statutory demand should be set aside?

In the instant case, the Creditor explained in detail events leading up to the issuance of the Statutory Notice. The Creditor’s correspondence is annexed confirming these events culminating with the demand to the Debtor for settlement of the outstanding debt. The Creditor confirms notice to the Debtor and thereafter service of the statutory notice was to the executive director, these events were not controverted by the Debtor.

Whether the Statutory demand can be set aside?

The Debtor relied on **Regulations 16 and 17** of the Insolvency Regulations and particularly **17(6)(d)** which requires that where Court is satisfied, on other grounds, that the statutory demand ought to be set aside

Regulation 16 of the Insolvency Regulations, 2016 allows the debtor to apply to court for an order to set aside the statutory demand. It provides thus;

“Application to set aside statutory demand

1) *The debtor may, apply to the court for an order to set aside the statutory demand-*

a) *Within twenty- one days from the date of the service on the debtor of the statutory demand; or*

b) *If the demand has been advertised in a newspaper, from the date of the advertisement's appearance or its first appearance, whichever is the earlier."*

Regulation 17 (6) of the Insolvency Regulations, 2016 goes further to list the grounds under which the court shall grant the application to set aside Statutory Notice and states thus;

"The court may grant the application if-

a) *The debtor appears to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the 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."*

In *Peter Munga –vs- Africa Seed Investment Fund LLC [2017] (supra)*; it was held the grounds for setting aside the statutory demand are not limited by statute. The judge went further to interpret **sub section (d)** as giving the court a spacious discretion. It stated further that;

"It is certainly not possible to foresee all the instances which may properly fall under paragraph (d) of Regulation 17. My view is that, when asked to set aside a demand on any other ground other than the grounds stated under paragraphs (a), (b) and (c), the question then becomes whether the applicant-debtor can show a substantial reason akin to the reasons under the preceding three paragraphs. The test, which is not necessarily conclusive, is whether it would be unjust for the statutory demand to give rise to insolvency proceedings in the particular case."

In *Kwale International Sugar Co Ltd vs Epco Builders Ltd & 2 Others [2020] eKLR*, the Court held;

"The reason I have set out the aforesaid provisions is to show that to the extent that the Company relied on Regulations 16 & 17 that relates to bankruptcy of natural persons, in the instant application it is incompetent and lacks merit as Regulations 77 & 78 of Insolvency Regulations that are applicable for liquidation of Companies does not contain a corresponding provision for setting aside of statutory demands issued to Companies."

From the above excerpt, **Regulations 16 & 17 of Insolvency Regulations** are not applicable with regard to liquidation of Companies but for bankruptcy.

The setting aside of the Statutory demand is within the purview of the Court if in compliance with the law. It is not within the purview of the Court to set it aside as in relation to **Companies Regulations 16 & 17 of Insolvency Regulations** relate to bankruptcy and not liquidation of the Company.

In the instant case; it is the Applicant's position that it acknowledges the outstanding debt of **Ksh 58,238,783/-** in its **paragraphs 10, 11, 13, 33, 34, 37, & 38** of its Supporting Affidavit. The debt emanates from supply of fertilizer by the Creditor to the Debtor 2017-2018. The last supply was on 19th June 2018 for fertilizer valued at **Ksh 980,000/-**.

The Debtor also admitted part payment of the debt; on 26th September 2018 paid **Ksh 18,506,400/-**, on 4th February 2020 paid **Ksh 20,000,000/-** & 7th February 2020 paid **Ksh 3,000,000/-**. The outstanding balance is now at **Ksh 35,000,000/-**. The Debtor submitted that after harvesting it is able to make good its debt and it is for this reason that the debtor had been supplied with fertilizers which are paid after the produce. Therefore, the debtor cannot be held as unable to pay its debts as they fall due. The Debtor promised/undertook to settle on or before 31st August 2020 after the harvest expected between late July and finally September 2020.

The Debtor the debtor has already paid **Kshs.23,000,000** to the Creditor and is proposing to settle the balance of **Kshs.35,000,000** in four instalments as from the month of September upon harvesting of the produce.

Further, the Debtor proposes the creation of a security in favour of the Creditor and has availed valuation reports of some of its properties for the said purpose.

The instant application was heard on 7th October 2020 and scheduled for Ruling 11th November 2020. It is almost 6 months now and hopefully the debt outstanding is settled or reduced.

On the other hand, the Creditor's position is that whereas the **Insolvency Act, 2015** as read with the **Insolvency Regulations 2016** and the

Insolvency Act (Amendment Regulations 2018) make provision for setting aside statutory demand issued under bankruptcy proceedings, no such provision has been made in relation to written demands issued pursuant to liquidation of companies.

The Creditor relied on **Section 384 (1)** of the Insolvency Act [also **Regulation 77b** of the Insolvency Regulations 2016] that the Debtor is unable to pay its debt as it fell due. The Creditor sold fertilizer sold to the Debtor in 3 lots from February – March – May – September 2018. The Fertilizer sale/Purchase Agreements stipulated payment was due 1 month after delivery of the fertilizer. The Creditor, explained in detail events leading up to the issuance of the Statutory Notice; the Creditor's correspondence culminating with the demand to the Debtor for settlement of the outstanding debt confirms notice to the Debtor and thereafter service of the statutory notice was to the executive director, these events were not controverted.

The Debtor in its submissions acknowledged that it has provided two properties whose aggregate valuation is **Kshs.36,650,000**. The value of the said properties exceeds the amount of liability to the Creditor and thus the Statutory Demand ought to be set aside.

This Court notes with concern from the annexed valuation reports of the suit properties **3 Title documents C/S Mara /Ololulunga/3764/3766/ 3794, C/S Mara /Lemek/296/, C/S Mara/Ewaso Nyiro/1125/1169/ 1170** are charged to **Agricultural Finance Corporation (AFC)** for loan facilities incurred from 2016-2018. Therefore, at this stage, the Court cannot confirm the suit properties available as security are to be considered to be charged to the Creditor and/or that the assets of the Debtor are of higher value *vis a vis* the debts. Suffice is to state at this stage, the evidence tilts to show that the outstanding debt of now Ksh 35,000,000/- remains outstanding with no payments advanced since February 2020.

This Court finds that the Statutory demand was legally and properly served to the Debtor in light of the circumstances considered above and in compliance with **Section 384 (1) & (2) of Insolvency Act** that the Debtor is unable to settle outstanding debt after service of the statutory notice.

This Court also considers the unforeseen circumstances that the Debtor faced, the untimely demise of the Executive Director and change of management by other, Directors, the severe drought of 2018, theft of funds in 2019 and as judicially noticed the drastic adverse impact of Corvid 19 pandemic 2020- 2021.

From these competing circumstances, it will be unjust for the Debtor to be subjected to insolvency proceedings considering that despite the circumstances, it has tried to settle the outstanding debt by part payment made towards its debt to the Creditor.

On the issue of whether the Statutory Demand is valid in terms of its format I do find that the form of the Statutory Demand is not fatal as long as all the statutory elements are set out in the demand.

The Debtor has admitted that it is indebted and that it has already paid **Kshs.23,000,000** which is evidence that it is willing to settle its debt to the Creditor. The Debtor has shown that it is able to pay its debts by paying the **Kshs.23,000,000** which is almost half of the debt owed to the Creditor. A winding up petition would definitely affect its business. It has also asked for an opportunity to settle its indebtedness.

In conclusion, I do find that the Statutory Demand is valid. In view of the circumstances highlighted above, the Creditor's Statutory Demand dated **17th January 2020** should be suspended for a reasonable period and the suspension of the demand should be on condition that the Debtor pays the Creditor the amount due of **Kshs.35,000,000** within the said period.

DISPOSITION

- 1. The statutory demand dated 17th January 2020 is upheld as valid.**
- 2. The Applicant's application of 18th March 2020 to set aside the statutory demand is dismissed with costs.**
- 3. In light of the onset of Corona Pandemic its lockdown and adverse impact on social, economic and political life, the Applicant is granted 90 days to regularize payments of the debt of Ksh.35,000,000/- before Insolvency proceedings are commenced.**

DELIVERED SIGNED & DATED IN OPEN COURT ON 13th APRIL 2021 (VIRTUAL CONFERENCE)

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF:

MS BHUPINDER DHILLON –DIRECTOR OF DEBTOR COMPANY

MS BUNDI H/B MR. GITONGA FOR THE CREDITOR COMPANY

COURT ASSISTANT- TUPET

Mr. Quandaru Thuita: We wish to confirm that the debt has since been settled with the Creditor.

Court: The matter is marked as settled.

M.W. MUIGAI

JUDGE