



In re Liquidation of Put Sarajevo Engineering Company Limited (Insolvency Petition E020 of 2020) [2025] KEHC 13969 (KLR) (Commercial and Tax) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13969 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E020 OF 2020
F GIKONYO, J
SEPTEMBER 25, 2025
IN THE MATTER OF LIQUIDATION OF PUT SARAJEVO ENGINEERING CO. LTD**

BETWEEN

PUT SARAJEVO ENGINEERING COMPANY LIMITED APPLICANT

AND

HAMILTON HARRISON AND MATHEWS RESPONDENT

AND

NATIONAL BANK OF KENYA INTERESTED PARTY

ARROW CARS LIMITED INTERESTED PARTY

**FRONTIER HAULAGE & CONSTRUCTION COMPANY
LIMITED INTERESTED PARTY**

BANK OF AFRICA LIMITED INTERESTED PARTY

RULING

1. The applicant/ debtor filed the notice of motion dated 17th February 2025 seeking a review, reconsideration, setting aside or variation of the judgment delivered and orders of liquidation issued on 23rd January 2025.
2. The application is made under sections 1A, 1B, 3A and 80 of the *Civil Procedure Act* and order 45 of the *Civil Procedure Rules*.
3. The application is based on the grounds outlined in the body, the supporting affidavit sworn by the applicant's human resource and personnel manager, Josephine Oluoch, on 17th February 2025 and written submissions dated 31st May 2025.



4. The background is that the applicant instructed the respondent/ petitioner to act for it in two arbitral proceedings against the Government of the Republic of Kenya, the Ministries of Local Authorities and Public Works and Housing, Roads Development.
5. According to the applicant, it was agreed that the respondent's fees would be paid once the arbitral awards were settled.
6. The applicant claimed that rather than await the settlement of the arbitral awards, the respondent instituted these liquidation proceedings on the basis that it was unable to pay the legal fees of Kshs. 5,828,700.
7. The applicant deposed that on 19th February 2024, during the pendency of the insolvency petition, the Attorney General wrote to the respondent confirming receipt of Kshs. 26,868,445.35 from the Ministry of Lands, Public Works, Housing, and Urban Development. That the amount was
8. The applicant submitted that there is an error on the face of the record because the court did not consider its replying affidavit, sworn on 31st October 2022, in opposition to the liquidation petition. The court therefore did not address the substantive issues raised in the judgment. The applicant faulted the court for stating that it did not see its reply and the evidence, yet the respondent had filed a response thereto.
9. The applicant further submitted that there is sufficient reason for judicial reconsideration due to pending payment by the Government. It highlighted that the respondent was aware that there are substantial sums due from the Office of the Attorney General, exceeding the alleged fees owing. It faulted the respondent for declining to facilitate the collection of the funds out of mischief.
10. The applicant relied on:-
 1. Republic v Public Procurement Administrative Review Board & 2 Others [2018] eKLR
 2. [*Gatirau Peter Munya v Dickson Mwenda Kitiinji*](#) [2014] eKLR
 3. [*Invesco Assurance Co. Ltd v Nzai & 58 Others*](#) [2023] KEHC 18006
 4. [*Benjob Amalgamated Ltd & Another v KCB*](#) [2014] eKLR
 5. [*Nyamogo & Nyamogo Advocates v Kogo*](#) [2001] EA 173
 6. [*Abdul Rehman Haji v Al Husnain Motors Ltd*](#) [2010] eKLR
 7. [*Law Society of Kenya v Attorney General & Another*](#) [2019] eKLR
 8. [*Kevin Kenya Ltd v Hipora Business East Africa Ltd*](#) [2025] KECA 1195

Responses

11. In opposition to the application, the respondent filed grounds of opposition dated 18th March 2025, a replying affidavit sworn by Kiragu Kimani, SC on 20th March 2025, written submissions dated 14th May 2025.
12. The respondent contended that the applicant has not met the threshold to be granted an order for review. It argued that the application is a disguised appeal as it requires a reappraisal of the entire evidence as presented before the court and re-evaluation of facts and legal arguments already determined.



13. The respondent highlighted that the petitioner did not file a response to the petition despite service. It faulted the applicant for failing to participate in the proceedings at the appropriate time. It also pointed out that the applicant has not complied with its financial obligations and remains indebted to the petitioner.
14. The respondent contended that the arbitral award remains unreleased due to the respondent's failure to sign the discharge voucher, as required by the Attorney General's letter of 19th February 2024. That the applicant's advocates ignored the respondent's request to facilitate this on 27th February 2024. It asserted that Miscellaneous Application No. E375 of 2024 and Commercial Case No. E017 of 2019 are irrelevant to this case.
15. The official receiver filed the replying affidavit sworn by Mark Gakuru on 25th March 2025 and written submissions dated 16th June 2025. It was submitted that the liquidation order can be stayed for a sufficient reason, being that a debtor has shown that it can pay its debts to the satisfaction of creditors. It was noted that the applicant's payment proposal to the respondent from the expected payment of Kshs. 26,868,445.35 is inconsistent with the *Insolvency Act* for failure to consider the other creditors. Nevertheless, it was indicated that in the event that the debtor is desirous and able to satisfy this court that it is able to pay its debts, the balance of convenience lies in staying the liquidation order.
16. The official receiver relied on:-
 1. [*Wachira Karani v Bildad Wachir*](#) [2016] KEHC 6336 (KLR)
 2. [*DAC Aviation \(EA\) Limited v AMRA Leasing Limited & 3 others*](#) (Insolvency Petition E039 of 2020) [2023] KEHC 20528 (KLR) (Commercial and Tax) (14 March 2023) (Ruling)
17. The 1st interested party, National Bank of Kenya Limited (NBK), filed a replying affidavit sworn by its legal officer, Chrispus Maithya, on 17th April 2025. It also filed written submissions dated 26th May 2025. It was averred that the applicant has an outstanding debt of Kshs. 876,411,073.62 owing to the bank, for which the applicant has not proposed to settle.
18. The 1st interested party relied on:-
 1. [*Republic v Public Procurement Administrative Review Board & 2 others*](#) [2018] eKLR
 2. [*Invesco Assurance Company Limited v Nzai & 58 others*](#) (Insolvency Cause 1 of 2018) [2023] KEHC 18006 (KLR)
19. The 3rd interested party, Frontier Haulage & Construction Company Limited, filed a replying affidavit sworn by its director, Taghi Hossein Zadeh on 21st March 2025. It also filed written submissions dated 16th April 2025.
20. The 3rd interested party highlighted that it is a decree holder pursuant to a judgment delivered in HCCC No. 134 of 2017- [*Frontier Haulage & Construction Co. Ltd v Put Sarajevo General Engineering Co. Ltd.*](#) The judgment awarded an aggregate sum of Kshs. 121,508,897.21/- comprising Kshs. 57,315,517.55 as principal and Kshs. 64,193,379.66 as interest as of 2025. It issued two statutory demands both dated 6th May 2024 and they were endorsed by the Deputy Registrar in Insolvency Petition No.s E090 of 2024 and E049 of 2024. Following the issuance of judgment in these proceedings, it withdrew the said petitions in good faith to pursue execution
21. The 3rd interested party argued that the applicant's invocation of a pending dispute in Insolvency Cause No. E017 of 2024, a justification for review is a red herring. It highlighted that section 428 of the *Insolvency Act* automatically stays such proceedings once a liquidation order is granted.



22. The 3rd interested party submitted that the grant of the review would prejudice legitimate creditors as the applicant's debt exceeds Kshs. 1 billion, yet the amount of payment expected is Kshs. 25 million.
23. The 3rd interested party relied on:-
 1. [Matundura \(Suing as the Legal Representative and Administrator of the Estate of Kerebi Matundura\) v Matundura & 3 others](#) [2023 KEELC 18214 (KLR)]
 2. National Bank of Kenya v Ndungu Njau [*supra*]
 3. [Alpha Fine Foods Limited v Horeca Kenya Limited & 4 Others](#) [2021] eKLR and
 4. [D. J. Lowe & Company Limited v Banque Indosuez](#) Civil Appl. Nai. 217/98 (UR).

Analysis and Determination

24. The court may review an order or decree from which no appeal has been preferred or from which no appeal is allowed. Section 80 of the [Civil Procedure Act](#).
25. This discretion must be exercised based on reason and not on a whim. Thus, may be exercised on any of grounds for review set out in Order 45 of the [Civil Procedure Rules](#) to wit;

“discovery of new and important matter or evidence, mistake or error apparent on the face of the record, or for any other sufficient reason.”
26. The Court may, upon proper reason, at any time after an order for liquidation is made, make an order staying the proceedings, either permanently or for a specified period, on such terms as the Court considers appropriate. S. 447 of the [Insolvency Act](#).
27. The court may also set aside a liquidation order inter alia where it is satisfied that the company is able to pay its debts or has paid its debts.
28. Review of liquidation order should be seen within this framing.
29. According to the applicant, there is an error on the face of the record because the court did not consider the substantive issues raised in its response to the liquidation petition. The applicant further submitted that there is sufficient reason for judicial reconsideration due to pending payment by the Government.
30. On the other hand, the respondent submitted that there is no error as the court correctly found that there was proper service on 24th July 2020, there was no response to the petition, an undisputed debt of Kshs. 5,828,700 and additional creditor claims. The respondent asserted that the applicant's claim of a contingent fee agreement was not raised during the petition. As regards the letter of 19th February 2024, the respondent confirmed that it was within its knowledge but argued that the applicant's failure to act does not render it new. The respondent further claimed that the contingent fee claim lacks evidence and is contradicted by partial payments of Kshs. 1,839,040 and repeated payment promises.
31. At para. 12 of the judgment, the court (H. Namisi J.) observed:-
 - “12. As determined by the Court in its Ruling on 31 March 2022, service was properly effected upon the Respondent. The Respondent did not file any response to the Petition. It is not disputed that the Petitioner has a valid claim against the Respondent for a total sum of Kshs. 5,828,700/-.”



32. The applicant claimed that the court did not consider its replying affidavit, sworn on 31st October 2022. However, the respondent was firm that the court correctly pronounced itself that the debtor did not file any response to the petition.
33. From a study of the record, there is no replying affidavit, sworn on 31st October 2022, either in the physical file or on the Judiciary's Case Tracking System.
34. Of note, the copy of the replying affidavit, alleged to have been sworn on 31st October 2022, annexed to the supporting affidavit to the application, is unclear.
35. Hence, the claim that the court erred by failing to consider its substantive response to the petition is unsubstantiated.
36. Therefore, I find that there is no error on the face of the record to warrant a review.
37. Is there any other sufficient reason for review?
38. The applicant asserted that there is a sufficient reason for review as there is a pending payment that it is expecting from the Government, exceeding the alleged fees owing.
39. It is not disputed that there is a pending payment of 26,868,445.35/-. The fees owing to the respondent is Kshs. 5,828,700/-. But, the sum held in the office of the AG belong to the applicant and not the petitioner whose interest is limited to their fees and at best a lien for fee. Be that as it may, the advocates are not in possession of the funds. The argument does not therefore, hold sway.
40. The respondent highlighted that the applicant has not complied with its financial obligations and remains indebted to the petitioner. It also retorted that the arbitral award remains unreleased due to the applicant's failure to sign the discharge voucher, as required by the Attorney General's letter of 19th February 2024. The applicant's advocates ignored the respondent's request to facilitate this on 27th February 2024.
41. The applicant did not controvert this.
42. The court also notes that while the pending payment exceeds the amount owing to the respondent, the debtor company has other debts owing to its other creditors.
43. The 1st and 3rd interested parties, who are supporting creditors, both opposed the review application because of outstanding debts owed to them of Kshs. 876,411,073.62/- and Kshs. 121,508,897.21/-. The applicant did not also controvert this.
44. The court finds that there is no sufficient reason for review.
45. In the upshot, the debtor's application dated 17th February 2025 is dismissed with costs for want of merit.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 25TH DAY OF SEPTEMBER, 2025.

F. GIKONYO M
JUDGE

In the presence of: -

Ms. Obwangi for Petitioner



Asembo for Applicant

Ms. Ndirangu for NBK

Thuo for Eredi for Alukas Ltd

Nadio for Bank of Africa

Korir for Official Receiver

Towett for 3rd Interested Party

CA- Kinyua

