



**Meds Pharmaceuticals Limited v Harleys Limited (Insolvency Petition E047 of 2024)
[2025] KEHC 14538 (KLR) (Commercial and Tax) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14538 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E047 OF 2024**

**F GIKONYO, J
OCTOBER 9, 2025**

BETWEEN

MEDS PHARMACEUTICALS LIMITED APPLICANT

AND

HARLEYS LIMITED RESPONDENT

RULING

1. The debtor company filed the notice of motion dated 14th October 2024 under Regulation 77 (b) of the Insolvency (Amendment) Regulations, seeking: -
2. an order directing the respondent to do a reconciliation of accounts demonstrating and sharing all corresponding individual invoices how the alleged debt was arrived at and share it with the applicant.
3. Setting aside of the liquidation proceedings.
2. The application is supported by the grounds on its face, the supporting affidavit sworn by Peter Ontwomwa Nyamari Mogeni on 14th October 2024.
3. The company anchored its application on two major grounds. The first ground is that the liquidation proceedings are grounded in bad faith since they are based on a statutory demand that is premature intended to exert pressure on it to concede to untenable demands. Secondly, that the documents produced by the petitioner were not certified, customer statements are not accompanied by referenced invoices and not accompanied with a certificate of electronic evidence.
4. The company asserted that the debt is disputed on substantial grounds and cannot be the subject of liquidation proceedings. That a statutory demand and liquidation proceedings cannot be the basis of liquidation proceedings.



Response

5. The petitioner opposed the application through a replying affidavit sworn by its credit controller, Joseph Muhuri on 17th December 2024. Its main argument is that the debt 11,429,255.73 was admitted through various letters and emails; that the debtor sought a payment plan but has breached all the payment plans previously proposed. The deponent annexed copies of the correspondence.
6. On 26th November 2024, the court granted prayer 1 and 2 of the application.
7. The debtor filed a supplementary affidavit sworn on 12th February 2025 deposing that the petitioner failed to comply with prayer 2. It contended that the correspondence exhibited were inadmissible as they were not certified and not accompanied by invoices. It also contended that the whatsapp and email correspondences were not accompanied by a certificate of electronic documents as required under section 106 (B) (4) of the [Evidence Act](#).

Partial Ruling of 17th March 2025

8. On 17th March 2025, Justice Mabeya issued a partial ruling wherein he observed that: -
 - “ 5. ...That the documents relied on to commence liquidation proceedings were unauthenticated and therefore unreliable. The Court will not peremptorily terminate the proceedings without having a look at the accounts and the documents alleged.”
9. The Court then gave the petitioner another opportunity to comply with prayers 1 and 2 of the application within 30 days as the earlier directions had not been served upon it.
10. The petitioner filed a further affidavit sworn by Alice Kimiri its credit controller on 1ST April 2025. She exhibited a statement of accounts and invoices.
11. In reply, the debtor filed a further supplementary affidavit sworn on 14th April 2025. The debtor impugned the purported invoices exhibited as they were never received as depicted by the missing signatures on the part of the recipient.
12. The debtor also challenged the purported customer statements which were based on the impugned invoices.
13. The debtor faulted the petitioner for lumping the annexures without demonstrating the nexus with the alleged debt of Kshs. 10,391,397.80.
14. The debtor asserted that the petitioner has failed to do a reconciliation of its accounts, to prove how the alleged disputed debt was arrived at.

Submissions

15. The application was canvassed through written submissions. The debtor and the petitioner filed written submissions dated 12th February 2025 and 23rd September 2025.
16. The debtor rehashed the points that it had raised earlier through its application and affidavits. It urged the court to allow its application as the documents exhibited are not admissible.
17. The debtor reiterated that the exhibits are not certified and hence not admissible under section 35(2) (b) of the [Evidence Act](#). It also reiterated that they are inadmissible for lack of a certificate of electronic evidence required under section 106 (b) of the [Evidence Act](#).



18. The debtor relied on: -
 1. Dickson Ngigi Ngugi v Morrison Njenga Waweru [1979] eKLR
 2. County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR
 3. Nairobi Business Ventures Limited v Greenhills Investment Limited [2021] eKLR
 4. Jabavu Village Limited v Credit Bank PLC (Insolvency Notice E179 of 2022) [2023]; KEHC 25142 (KLR)
19. On the other hand, the petitioner submitted that the debtor has not demonstrated the existence of a genuine or substantial dispute regarding the debt. The alleged dispute is raised only after the commencement of liquidation proceedings and is not supported by any credible evidence. The debtor repeatedly admitted to the debt in writing and proposed payment plans, all of which it failed to honour.
20. The petitioner contended that a mere request for reconciliation of accounts does not amount to a genuine or substantial dispute.
21. The petitioner added that negotiations, absent a concluded and binding agreement, do not restrict a party's right to seek legal recourse.
22. The petitioner asserted that a genuine dispute should not be spurious, hypothetical, illusory, or misconceived. It cannot be plainly vexatious or frivolous, or so devoid of substance that no further investigation is warranted. Mere fanciful or futile allegations do not meet the required threshold.
23. The petitioner argued that the debtor's objections to its documents are purely technical not substantial. It contended that the documents are admissible under Sections 35(2)(b) as they were produced by the persons who were directly involved. It further contended that section 106B(4) of the Evidence Act is meant to safeguard authenticity. That where authenticity is not contested, the lack of certification affects weight, not admissibility.
24. The petitioner relied on: -
 1. Kevian Kenya Limited versus Hipora Business East Africa Limited (Civil Appeal 50 of 2019) [2025] KECA 1195 (KLR)
 2. Flower City Limited v Poly tanks & Containers Kenya Limited (Insolvency Cause 033 of 2020) [2021] KEHC 34 (KLR)
 3. Sichuan Huashi Enterprises Corporation East Africa Limited v Landbank Real Estate Investment Trust Limited] KEHC 89 (KLR)
 4. Bernard Gichuki v Stima Investment Co-operative Society Limited [2021] eKLR
 5. Mable Muruli v Wycliffe Oparanya & 3 Others [2013] KEHC 2940 (KLR)
 6. Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2013] eKLR
 7. Ecobank Kenya Ltd v Joshua Mbithi Mwalyo [2024] KEHC 14386 (KLR)
 8. Re Sucasa at Mombasa Road Limited [2019] eKLR
9. Synergy Industrial Credit Limited v Multiple Hauliers (EA) Limited [2020] eKLR



Analysis and determination

25. The grounds on which the Court can set aside a statutory demand are set out under Regulation 17(6) of the Insolvency Regulations as follows: -

- “a. The debtor appears to have a counterclaim, set-off or cross-demand which equals or exceeds the amount of the debt or 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.”

26. The debtor bears the onus of proof to demonstrate that there are genuine and substantial grounds for disputing the debt.

27. In *Flower City Limited v Polytanks & Containers Kenya Limited* [supra], the court observed that: -

“The rationale for applications of this nature is to enable the debtor to satisfy the court that he genuinely disputes the debt. Simply put, a debtor must demonstrate the existence of a genuine dispute. Though it may not be possible to provide a closed list of the elements of a genuine dispute, the applicant must: -

- i. Show a plausible contention requiring investigation;
- ii. Be bona fide, genuine and real;
- iii. Be in good faith and show a prima facie plausibility;
- (iv) Truly exist in fact, and contain a serious question to be tried;
- iv. Be something more than mere bluster or mere assertion;
- v. Be a claim that may have some substance;
- vi. Have a sufficient degree of cogency to be arguable;
- (viii) Have objective existence; and
- (ix) Have sufficient factual particularity.

12. A genuine dispute therefore should not: -

- a. Be spurious, hypothetical, illusory or misconceived;
- b. Be plainly vexatious or frivolous;
- c. Be so devoid of substance that no further investigation is warranted;
- d. Be merely spurious claim, bluster or assertion; and



e. Be merely fanciful or futile.”

28. The debtor objected to the petitioner’s documents, citing non-compliance with Sections 35(2)(b) and 106B (4) of the Evidence Act.
29. The petitioner argued that these objections are mere procedural technicalities that do not affect the substance of the dispute, since the petitioner has already admitted the debt.
30. The petitioner exhibited correspondence between it and the debtor. It relied on the correspondence to argue that the debtor has admitted the debt of Kshs. 10,391,397.80.
31. The debtor contended that the correspondence exhibited were inadmissible as they were not certified.

Certification

32. Section 35 (2) (b) regards the production of documentary evidence. It provides that the court can admit a document not made by the maker provided that if the original document is not produced, a certified true copy is given.
33. The petitioner asserted that the documents exhibited were produced by Joseph Muhuri, with personal knowledge of the matter. Therefore, the documents are admissible under section 35 (1) of the Evidence Act.

Certificate of Electronic Evidence

34. The debtor also contended that the WhatsApp and email correspondences were not accompanied by a certificate of electronic documents as required under section 106 (B) (4) of the Evidence Act.
35. The court has numerously underlined the requirement of a certificate of electronic evidence that fulfils the requirements of authenticity and validity of the information and/or evidence. John Lokitare Lodinyo v I.E.B.C and 2 Others [2018] eKLR
36. Other courts have recognized that failure to file a certificate of electronic evidence is curable. In Nonny Gathoni Njenga & Jane Wambui Odewale & 2 Others Civil Case 490 of 2013, cited in Ogembo v Yongo [2024] KEHC 15763 (KLR) the court held that the petitioner may be given time to provide the certificate.

Statement of account and Invoices

37. The petitioner also exhibited a customer statement of account reconciling and showing how the alleged debt was arrived at.
38. The petitioner further exhibited invoices. The debtor contended that the purported invoices were not signed by the recipient in acknowledgment, that the part for the recipient was blank.
39. However, the petitioner asserted that the receipts were stamped. From a close study of the receipts exhibited, I noted that they were stamped with the debtor’s stamp, dated and signed. Some of the invoices bear a clear stamp while on others the stamp is faint, but the dates and signatures are clear.
40. On the totality of the exhibits, I am not persuaded that the debt is disputed on substantial grounds so as to warrant the setting aside of the liquidation proceedings at this juncture.
41. But, before I close, I wish to emphasize the need for amicable settlement of such matters rather than litigation through insolvency process. The latter will yield a determination by the court which may include decimation of the company and its business leading to loss of livelihoods. The former



will yield a resolution by the parties' and which takes consideration of their respective interest, they can live with and appreciate. Appreciation comes where relationships are healed and restored. Much appreciation comes where a business is saved 'from the cross' and livelihoods sustained. Let the parties think carefully about using the multiple doors provided under article 159(2)(c) of *the Constitution* for dispute resolution. The circumstances of this case would most benefit from amicable settlement. I do note that the petitioner has complained that it had been engaged in fruitless negotiations. The parties should be propelled by good faith rather than demented desire to temporize the dispute. Because of this, I will give parties an opportunity and refer them to seek amicable settlement through the alternative justice systems provided in article 159(2)(c) of *the Constitution*; the greatest gift the people of Kenya gave unto themselves making them not only justice seekers as they were perceived earlier, but also actors in the resolution of their disputes. The parties to give the court a report within 45 days of today.

Disposal

42. The debtor's application dated 14th October 2024 is dismissed for want of merit with costs to the petitioner.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2025
THROUGH TEAMS ONLINE APPLICATION.**

F. GIKONYO M

JUDGE

In the presence of: -

Okoth for Respondent

Ms. Chenges for Biyogo for Applicant

CA Kinyua

