

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
HCCOMMIP. CASE NO. E026 OF 2023

HON. JUSTICE ALEEM VISRAM

22ND OCTOBER, 2025

BETWEEN

PLASTECH (K) LIMITED.....PETITIONER

AND

MEPCCCO AFRICA LIMITED.....RESPONDENT

JUDGMENT

1. I have considered the Liquidation Petition dated 27th March, 2023, together with the various affidavits sworn in support on 30th December, 2024, by the Petitioners. I note the same is unopposed.
2. Despite the fact that the Petition was undefended the Petitioner still had the duty to prove that the Petition be allowed. In *Intona Ranch Ltd vs. O'Brien (1992) KLR 1* the Court of Appeal expressly stated that: -

“It is settled law that the winding up order is not automatic. There must be proof of insolvency and/or inability on the part of the Company to pay its debts.”

3. The Petitioner contended that the Company ought to be liquidated by the Court because it was not able to satisfy its debts.

4. Section 424(1)(e) of the Insolvency Act No. 18 of 2015 (hereinafter referred to as 'the Insolvency Act') provides as follows: -

(1) A company may be liquidated by the Court if –

a.

b.

c.

d. The company is unable to pay its debts;

5. Section 384 of the Insolvency Act provides for the circumstances in which a company may be deemed unable to pay its debts. The provision states as follows:-

(1) For purposes of this Part, a company is unable to pay its debts-

a) if a creditor (by assignment of 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.

b)if execution or other process issued on a judgments, decree or order of any court in favour 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).

6. I have noted that in the present matter, that the statutory demand was served on 4th January, 2023, and affidavit of service filed on 27th March, 2023.

7. The Petition was advertised on 11th February, 2025, an affidavit of service is sworn on 17th March, 2025, in compliance with the insolvency regulations. No creditor has to date sought to join the petition and there is no response to the Petition at present.

8. Further, the Official Receiver issued a certificate of compliance on 5th February, 2024, and the same is available in the court file.

9. I note an affidavit of service sworn on 17th March, 2025, states the hearing of the petition was scheduled for 22nd October, 2025, and the debtor was duly served

with the same on 11th February, 2025, by way of advertisement in the Daily Nation Newspaper. The same is on the court record.

10. I am satisfied that the company still owes the Petitioner the sum of Kshs 2, 064,33.49/- Therefore, pursuant to Section 384(1)(b) of the Insolvency Act the Petitioner demonstrated that the Company was unable to pay its debts for its failure to satisfy the amount due to the creditor.
11. That is a solid ground for a liquidation order. The Court of Appeal in a majority judgment in *Mombasa Civil Appeal No. 98 of 2017 Pride Inn Hotels & Investments Limited vs. Tropical Hotels Limited (2018) eKLR* clearly expressed itself as under: -

“This was clearly the case herein since the appellant did not make any payments after being served with a notice of demand by the respondent. Hence the respondent was entitled to bring a petition for liquidation of the appellant on the ground of its inability to pay its debt. Equally, I find no fault on the part of the learned Judge for issuing the liquidation order. There is no requirement under the Insolvency Act or the Companies Act which stipulates that liquidation of a company should be as a last resort. Liquidation is one of the options under the Insolvency Act which a creditor such as the respondent in the case, could pursue to secure payment of a debt, especially a debt that remains unpaid for several years and in respect of which the appellant has been given adequate time, opportunity and indulgence.”

12. Based on the reasons as set out above, the Court hereby orders that **MEPCCCO AFRICA LIMITED** be liquidated by virtue of liquidation order hereby made on this 22nd October, 2025.

13. The Court further orders that the Official Receiver be appointed as the liquidator.

14. Costs of the Petition are granted to the Petitioners and shall be paid out of the assets of the Company.

15. The file is marked as closed.

Dated and delivered virtually via Microsoft Teams this 22nd day of October, 2025

ALEEM VISRAM, FCIArb
JUDGE

In the presence of;

Court Assistant: Lispa

.....for Petitioner

.....for Respondent