

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT
NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
INSOLVENCY CAUSE NO. E047 OF 2025

**TYL
LIMITED.....
....APPLICANT**

VERSUS

**PINDORIA HOLDINGS
LIMITED.....RESPONDENT**

RULING

1. The application dated 10th April 2025 places for determination by the court the issue whether the statutory demand dated 7th March 2025 issued by the respondent should be set aside on account of an appeal pending before the Court of Appeal.
2. The application is premised on the grounds outlined in the application, the supporting affidavit sworn by the applicant's administration manager, **Bonface Mwaura** on 10th April 2025.

3. The background is that on 4th February 2025, **Justice Mongare** delivered a judgment in **HCCC 416 of 2015** in favour of the respondent and against it for Kshs 52,629,527.78/= together with interest at 18% per annum from 27th June 2015 until payment in full.
4. Aggrieved by the decision, the applicant lodged an appeal against the said judgment before the Court of Appeal, being **COACA/E271 of 2025**.

Grounds

5. According to the applicant, the lodging of the appeal is a demonstration of a genuine intention to challenge the judgment and the debt upon which the statutory demand is based.
6. It made further argument that, the issuance of the statutory demand and the threat of insolvency proceedings at this

stage are premature and will only prejudice its right to pursue its appeal before the Court of Appeal.

7. Thus, it is the applicant's view that allowing the insolvency proceedings to continue whilst the Appeal is pending would render the appeal nugatory thereby causing it irreparable harm. In addition, that it is in the interest of justice, just and equitable that the statutory demand be set aside pending the hearing and determination of the appeal.

Response

8. In opposition to the application, the respondent filed a replying affidavit sworn on 2nd May 2025 by its director, **Premji V. Pindoria**. It fronted that the statutory demand was served upon the applicant within statutory timelines. It pointed out that the applicant does not deny that it has

not settled or satisfied the statutory demand notice.

9. The respondent argued that there is no lawful basis to set aside the statutory demand as the subsistence of an appeal is not a bar to a decree holder commencing insolvency proceedings unless there is a stay of execution of the judgment.

Submissions

10. The application was canvassed through written submissions. The applicant filed written submissions dated 8th July 2025. At the time of preparing this ruling, there were no submissions filed by the respondent either in the Judiciary's Case Tracking System (CTS) or the physical file.
11. The applicant submitted that it has met the threshold for the grant of injunctive relief and for the grant of a stay of

execution of the subject judgment pending appeal.

12. The applicant relied on the following cases: -

- (1) **Giella v Cassman Brown & Co. Ltd [1973] EA 358**
- (2) **Naftali Ruthi Kinyua v Patrick Thuita Gachure & another [2015] KECA 911 (KLR)**
- (3) **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)**
- (4) **Philemon Morara Apiemi & Another v Chief Land Registrar & 2 Others [2020] KEELC 2562 (KLR)**
- (5) **Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR)**
- (6) **Universal Hardware Limited v African Safari Club Limited MSA CA**

Civil Appeal No. 209 of 2007 [2013]

eKLR

- (7) **Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR)**
- (8) **Jabavu Village Limited v Credit Bank Plc (Insolvency Notice E179 of 2022) [2023] KEHC 25142 (KLR) (Commercial and Tax) (10 November 2023) (Ruling)**
- (9) **Matic General Contractors Limited V Kenya Power and Lighting Company Limited, [2001] eKLR**

Analysis and Determination

13. The issue before the court is whether the statutory demand dated 7th March 2025 issued by the respondent should be set aside on account of an appeal pending before the Court of Appeal.

14. Under **Regulation 17(6) of the Insolvency Regulations**, the court may

set aside a statutory demand on the following grounds: -

“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.”

15. The debtor bears the burden to show that there are genuine and substantial grounds for disputing the debt. **Flower City Limited v Poly tanks & Containers Kenya Limited (Insolvency Cause 033 of 2020) [2021] KEHC 34 (KLR)**
16. The applicant's position is that the statutory demand should be set aside as there is an appeal pending against the judgment or decree on which the statutory demand is based.
17. The respondent took a different view that there is no basis for setting aside the demand as there is no stay of execution against the subject judgment.
18. The applicant in its submissions urged that it has met the threshold for the grant of a stay of execution of the judgment pending the appeal.

19. The court is not aware of any application for or an order of stay of execution of the decree in question before this Court in **HCCC 416 of 2015** or in the Court of Appeal.

20. Without a stay of execution of the subject judgment/ decree, there is no basis for setting aside the statutory demand. See **Order 42 Rule 6 of the Civil Procedure Rules, Njenga v Hamud [2025] KEHC 3864 (KLR)** and **Kituyi v Musimba (Insolvency Cause E013 of 2021) [2022] KEHC 16171 (KLR) (Commercial and Tax) (9 December 2022) (Ruling)**.

21. Whereas the court may set aside a statutory notice for sufficient cause, courts should be careful not to introduce grounds that may not be consistent with the insolvency law and regulations.

Disposal

22. The upshot is that the application dated 10th April 2025 is dismissed for want of merit with costs to the respondent.

**Dated, signed and delivered through
Microsoft Teams online application this
16th day of October, 2025**

F. Gikonyo M

Judge

In the presence of:

Ms. Maina for Osiemo for Applicant

Bondotich for Respondent

CA- Kinyua