



Victoria Commercial Bank, Plc v Good Earth Group Limited; R World Enterprises Limited & another (Creditor) (Insolvency Notice E016 of 2022) [2025] KEHC 14869 (KLR) (Commercial and Tax) (16 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14869 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY NOTICE E016 OF 2022
F GIKONYO, J
OCTOBER 16, 2025
IN THE MATTER OF THE COMPANIES ACT
OF 2015
AND
IN THE MATTER OF THE INSOLVENCY
ACT OF 2015
AND
IN THE MATTER OF GOOD EARTH GROUP
LIMITED

BETWEEN
VICTORIA COMMERCIAL BANK, PLC PETITIONER
AND
GOOD EARTH GROUP LIMITED RESPONDENT
AND
R WORLD ENTERPRISES LIMITED CREDITOR
FLOWTECH WATER SOLUTIONS LIMITED CREDITOR



RULING

1. The Good Earth (Group) Limited, CPR/2014/170971, was incorporated on 10th December 2014. The nominal capital of the company is KES.100,000/- divided into 1,000 shares of KES. 100 each. The amount of the capital paid up or credited as paid up is KES. 100,000/-.
2. The directors of the company are Nina Jayesh Shanghavi and Umedlal Jayesh Shanghavi. The shareholders of the company are Minerva Nominee One Limited, which owns one (1) ordinary share and The Great Food Company, which owns nine hundred and ninety-nine (999) ordinary shares.
3. The objects for which the company was established are, inter alia, operate restaurants and bars in Kenya.
4. The company was placed under administration on 10th February 2022, and Harveen Gadhoke was appointed as the Administrator. His term as Administrator lapsed on February 9, 2022.
5. The administrator lodged a liquidation petition of 29th September 2022 on the basis that the company had no funds to sustain the administration and that the company could not be maintained as a going concern.
6. Through a ruling dated 9th August 2023, the court found that the administrator lost the capacity to prosecute the liquidation proceedings as his term lapsed and he did not seek an extension as required. He therefore proposed that an application for the substitution of Harveen Gadhoke as applicant in the liquidation proceedings be made within 30 days of the order failing of which these proceedings would stand abated.
7. Thereafter, the petitioner filed a notice of motion dated 2nd October 2023 seeking to sustain the liquidation proceedings. Upon considering the application, the court, on 24th October 2023, allowed the application, thereby reviving and sustaining the liquidation proceedings.

Liquidation petition

8. The petitioner subsequently filed the liquidation petition dated 29th January 2024, 15th March 2024, under section 425 (1) (b) of the *Insolvency Act*, seeking: -
 - a. the court makes an order for the liquidation of the company;
 - b. Harveen Gadhoke be appointed as liquidator of the Company; and
 - c. the court makes such orders as may be necessary and just in the premises.
9. The petition is supported by the grounds set out in the affidavits sworn by its recoveries manager, Clement Gitau on 20th February 2025. The petitioner also filed written submissions dated 21st February 2025.
10. The petitioner's case is that the company has registered in its favour all assets' debentures on 30th August 2016, 11th November 2016, and 17th August 2020.
11. The petitioner contended that the company cannot be maintained as a going concern as it has no assets. That the objects of administration encapsulated under section 522 of the *Insolvency Act* cannot be achieved and it is therefore prudent to liquidate the company.
12. The petitioner averred that the status of the company is as follows:



1. There are no funds to sustain the administration, and the company cannot be maintained as a going concern;
 2. The company's outstanding debt owed to the petitioner as of 18th March 2022 is approximately KES. 1,273,000,000.; and
 3. The company also owes approximately KES. 290,000,000 to forty-one (41) unsecured creditors.
13. The petitioner asserted that during the initial creditors meeting held on 6th May 2022, it was proposed and unanimously approved by the creditors that the company enters a creditors' voluntary liquidation and a liquidator be appointed.
14. The petitioner relied on the following cases: -
1. In Re of an Application for Liquidation [2020] KEHC 2356 (KLR)
 2. In Re Ukwala Supermarket Limited [2019] KEHC 7877 (KLR)

Supporting Creditors' Responses

15. R World Enterprises Limited and Flowtech Water Solutions Limited both filed affidavits in support of debt of 21st February 2023 and 18th March 2023. Creditors' written submissions dated 2nd June 2025.
16. R World Enterprises Limited was awarded a contract by the Debtor Company for the construction of Blue Door and Mr. Yao Bar and Lounge at Kenrail Plaza Building, Westlands, Nairobi, on the 20th December 2018 for Kshs. 145,922,415.20/=. It was also awarded a tender for the construction of Emerald Kitchen Factory at Gigiri by the Company on the 27th March 2017.
17. The company failed to make the part of the requisite payments and currently owes it Kshs. 6,192,520.10/= for the work done and Kshs. 2,500,034.79/= interest that has accrued as of 4th March 2022 making a grand total of the unsecured sum owed at Kshs. 8,692,554.89/= which amount continues to accrue interest at the rate of 14.5% per annum until payment in full.
18. Flowtech Water Solutions Limited was awarded a tender for Plumbing and Drainage Services by the Company on the 3rd September 2018. The company owes it the principal sum of Kshs. 5,499,233.72 together with interest accrued as a result of the delayed payment calculated from the date of breach being the 4th March, 2022 of Kshs. 2,093,011.27/= making a grand total of Kshs. 7,592,234.99/= which sum continues to accrue interest at the rate of Kshs. 14.5% per annum and which sttod at Kshs. 8,339,337.08/= as of the 9th February 2023.
19. Consequently, the two creditors supported the petition. They asserted that the company is clearly in debt and cannot be maintained as a going concern any longer as the objects of administration cannot be achieved as there are no assets or funds to sustain such administration.
20. The creditors relied on the following cases: -
1. Kenya Artisans Limited v Chemical & Allied Workers Union [2021] eKLR
 2. Imbuki v Crown Health Care Limited; Planlink Limited (Supporting Creditor) Insolvency E012 of 2021 (20250 KEHC 3283 (KLR)



The Company

21. On behalf of the company, the shareholders filed replying affidavits sworn by Jayesh Umedlal Shanghavi and Nina Jayesh Shanghavi on 31st May 2024 and written submissions dated 20th May 2024.
22. The company submitted that the petition is incurably defective as it is not accompanied by a verifying affidavit as required under Rule 77B(1)(b) of the Insolvency Regulations.
23. The petitioners submitted that the petition lacks bona fides and is based on material non-disclosure. The proceedings before court have been improperly invoked to recover a disputed debt, and form part of a pattern by the petitioner to intimidate and harass the company and its directors and to defeat the company's efforts to sustain itself as a going concern.
24. The company argued that the debt that is the basis of the petition is disputed and the subject matter of ongoing proceedings in Milimani HCCOMM E127 of 2022.
25. The company submitted that the petitioner has so far defeated the objectives of the *Insolvency Act* and administration by actively causing deliberate wastage and diminution of assets that would otherwise be applied towards settlement of the debts that are rightly and justly due to the company's creditors.
26. The company contended that the petition is rooted in bad faith and misrepresents the true financial position of the company. That, it fails to account for the money that has been recovered.
27. The company asserted that it is still viable and there exist alternative remedies for recovery, demonstrated by its attempts to restructure and source for investments. It outlined the steps taken, including: -
 - a. Sourcing for and obtaining an investment offer of 4,500,000 USD from a private equity fund, all of which would be used to repay the outstanding loan facilities once ascertained;
 - b. Commissioning the firm of Baker Tilly to restructure the company's business and obtaining a report to that effect;
 - c. Using the said report, engaging an investor who was willing to inject KShs. 400,000,000 to repay the company's loan obligations; and
 - d. Directors offering to pledge their shares worth KShs. 70,000,000 to the bank.
28. The company urged that the court to allow it put its affairs in order without undue interference. It submitted that the turnaround proposals weigh against liquidation.
29. The company alluded to collusion between the petitioner and the proposed liquidator, highlighting that the instant petition like the previous petition, seeks the appointment of Harveen Gadhoke, and no other practitioner, as the liquidator.
30. The company contended that the conduct of the proposed liquidator during administration also failed to meet the fiduciary and statutory duties required of holders of such office under the *Insolvency Act*. It faulted the administrator for: -
 - a. unauthorized sale of the company's property in Gigiri without the knowledge of the company and further failing to account for the same, despite being an agent of the company. This also amounts to asset mismanagement
 - b. Failure to disclose the assets recovered for distribution and the status of such assets- a role which forms part of the duties of the administrator under the *Insolvency Act*, No. 18 of 2015.



- c. Refusal to consider the directors' turnaround proposals, demonstrating a lack of good faith.
 - d. Since the creditors' meeting held on 6th May 2022 there has been no known action undertaken and accounted for by the administrator (now proposed liquidator) in a bid to meet the objectives of administration.
 - e. Failure to issue any accounts update following the interference by the petitioner of the company's and directors' bank accounts and the unauthorized sale of shares.
31. The company relied on the following cases: -
- 1. Re Sucasa at Mombasa Road Limited [2019] KEHC 8872 (KLR)
 - 2. Universal Hardware Limited v African Safari Club Limited [2013] eKLR
 - 3. R v Immigration Appeal Tribunal ex-parte Jyeestation (1999) 3 ALL ER 231
 - 4. Ng'ang'a v Cytonn High Yield Solutions LLP (Miscellaneous Application E616 of 2021) [2022] KEHC 3368 (KLR) (Commercial and Tax) (26 May 2022) (Ruling)
 - 5. Nakumatt Holdings Limited & another v Ideal Locations Limited [2019] KECA 153 eKLR
 - 6. Lambart Lwanga Ogochi & 4 Others v. Ponginangipalli Venkata Ramana Rao [2022] eKLR
 - 7. Matic General Contractors Limited NAI CACA No. 26 of 2001 (UR)
 - 8. Kenya Power and Lighting Company Limited v. National Cereals & Produce Board (2002) 1 KLR 652
 - 9. Mohammed Yusufali and Another v Bharat Bhardwaj and Another [2007] eKLR
 - 10. Matic General Contractors Limited v Kenya Power and Lighting Company Limited (2001) 4837

Analysis and Determination

Issues

32. The first issue is of preliminary significance; whether the petition is defective. The second is; whether a liquidation order should be made.

The claim petition is defective

33. The company argued that the petition is incurably defective as it is not accompanied by a verifying affidavit as required under Rule 77B(1)(b) of the Insolvency Regulations.
34. The record confirms that the petition is supported by an affidavit of statement of facts. Therefore, the the company's claim that the petition is defective lacks merit.

Of Liquidation Order

35. Has the petitioner made a case for the grant of a liquidation order?
36. Section 424 (1) of the *Insolvency Act* provides that a company may be liquidated by the court if it is unable to pay its debts.



37. Section 384 of the *Insolvency Act* sets out the circumstances which a company is unable to pay its debts, as follows: -

“ 384.

- (1) For 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 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 judgment, 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).”

38. Inability to pay debts is a matter of proof through evidence, the onus resting with the applicant.

39. In *Kenya Artisans Limited v Chemical & Allied Workers Union* [supra], the Court observed that: -

“ 33. The court must decide whether all of the requirements in terms of the Act for the granting of a liquidation order have been met. It is for courts to exercise their discretion once all of the requirements have been established on a prima facie basis. In the absence of special or unusual circumstances which the respondent must establish, the court should ordinarily grant a liquidation order once the requirements are met.”

40. The petitioner exhibited the statement of affairs dated 18th March 2022 in which the directors stated that the company is insolvent and that the assets of the company are worth Kshs. 876 million while the liabilities are Kshs. 1.5 billion.

41. The petitioner also exhibited the company's audited accounts for 2021 reflecting the same.

42. The petitioner exhibited the administrator's final report dated 5th August 2022 accounting for the receipts and payments in relation to management of the affairs of the company.



43. The petitioner further exhibited a copy of the minutes of the initial meeting of creditors held on 6th May 2022. The minutes show that the creditors resolved that a company cannot be maintained as a going concern and that it should be liquidated.
44. On its part, the company did not produce any evidence in support of its claims. The respondent should demonstrate feasibility of the company to pay its debts as a justification for a rescue. Concrete and realizable plans as well as effective strategies are required to be laid bare before the court as opposed to merely stating that the company has the potential to continue as a going concern.
45. From the evidence on record, I find that the petitioner has established that the company is unable to pay its debts and that it is insolvent as its liabilities far exceed its available assets.
46. However, I do note that, serious allegations were made against the proposed liquidator who also acted as the administrator of the company. I will not therefore appoint the proposed liquidator. The office of the official receiver in consultation with the parties shall, within 30 days, submit a name of a person suitable for appointment as liquidator of the company.
47. Accordingly, I order that: -
1. An Interim Liquidation Order be and is hereby issued in respect of the debtor, Good Earth (Group) Limited.
 2. Liquidator of the company to be appointed on 3.12.25.
 3. Costs of the petition shall be borne out of the Company's assets.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 16TH DAY OF OCTOBER, 2025.

F. GIKONYO M
JUDGE

In the presence of:

Ms. Kale for Dacha for Respondent

Oseko for Awele for Shareholders

No appearance by Applicant

Ms. Kiage for 5th & 6th Respondents

CA - Kinyua

