



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Dado v Godhana (Insolvency Petition E001 of 2025)
[2025] KEHC 17114 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
INSOLVENCY PETITION E001 OF 2025**

JN NJAGI, J

NOVEMBER 20, 2025

BETWEEN

HUSSEIN TUNEYA DADO DEBTOR

AND

HON DHADHO DADDAE GODHANA CREDITOR

RULING

1. The creditor herein, has filed an insolvency petition against the debtor herein dated 22nd April 2025 on the ground that the debtor is indebted to the creditor in the sum of Ksh2,093,333.33/=and interest of 14% from 12th September 2024 until payment in full which sum arises from the decree of the court in HCCHR Pet No. E001 of 2021 between Hon. Hussein Tuneya Dado v Independent Electoral and Boundaries Commission and another for the payment of Ksh.2,000,000/= together with interest from 9th May 2024 till payment in full.
2. The Petition is based on grounds stated on the face of the Petition and supported by the verifying affidavit of the Creditor wherein it is deposed that the debtor challenged in an election petition the creditor's win as governor of Tana river County in the general election of 2022. That the election court upheld the creditor's election in a judgment delivered on 3rd March 2022 and awarded him Ksh.2,000,000/= in costs against debtor. That the creditor thereupon filed a Bill of Costs that was taxed at Ksh,2,000,000/= and a Certificate of Taxation to the said sum was issued by the court on 31st January 2024. That the creditor filed an application dated 1st February 2024 seeking that judgment be entered against the debtor which application was allowed on 9th May 2024 with interest from 9th May 2024 till payment in full. The court issued a decree on 26th September 2024 for payment of a cumulative sum of Ksh.2,093,333.33/=, which sum the debtor has refused, neglected and or failed to satisfy.
3. It is further deposed that the creditor thereupon served the creditor Debtor with the Statutory Demand dated 5th March 2025 in accordance with Section 17(3)(a) of the [Insolvency Act](#).



Upon lapse of 21 days and failure by the debtor to honour the Statutory demand, the Creditor filed the instant Petition.

4. It is deposed that from the conduct of the Debtor there is no reasonable prospect that he will be able to repay the debt.
5. The Petition was opposed by the Debtor via his replying affidavit dated 6th May 2025 wherein he deposes that he is not unable to pay his debts as to warrant issuance of the orders sought. That upon being served with Statutory Demand his advocates responded to the said demand vide a letter dated 18th March, 2025 in which they requested for a period of 30 days within which to make a proposal for the money owing. That on 23rd April 2025 the Debtor proposed to the creditor's advocate to settle the debt by monthly instalment of Kshs.250,000/= . That the debtor was thereafter served with the petition when the matter was being heard in court.
6. It was the Debtor's averment that he was in the process of negotiating terms of payment with the Creditor when the petition was filed. Further that the creditor has not attempted any other means of executing the certificate of costs prior to filing the petition. That insolvency petitions are supposed to be a last resort when all other forms of execution have failed. Therefore, that the petition is pre-mature and sought in bad faith merely to cause embarrassment to the debtor.

Submissions

7. The petition was canvassed by way of written submissions. Counsel for the creditor submitted that the petition complies with the provisions of Sections 17(2), (3) and (4) of the *insolvency Act* and in support of the same relied on the case of Re George Karunji (Insolvency Cause 04 of 2019) (2023) KEHC 18165 (KLR) (Commercial and Tax) (26 May 2023)(Judgment) where the court stated that:

The main issue for consideration in the Bankruptcy application against a debtor as stipulated under section 17 of the *Insolvency Act* is to specify the debt owed. The debtor is unable to pay the debt and under the law a debtor is presumed to be unable to pay a debt if he does not comply with or apply to set aside a statutory demand.

8. The petitioner submits that the Debtor owes him a sum of Kshs.2,093,333.33/= which has been owing since 3rd March 2023 which the debtor is unable to pay. That under the law a debtor is presumed to be unable to pay a debt if he does not comply with or apply to set aside a statutory demand.
9. That the debtor was served with statutory demand and has not complied with the demand and has not filed an application to set aside the statutory demand which blatantly demonstrates the need of the instant petition. The petitioner in this respect relied on the decision of the court in Re George Karunji Case (supra) where the court stated that:

After a statutory demand, demanding payment is served on a debtor and the debtor does not make payment within 21 days or does not apply to court to set it aside, the creditor may proceed to file a creditors bankruptcy petition against the debtor.

10. It was submitted that the Creditor has sent several reminders to the Debtor demanding payment of the amount owing which is yet to be settled.



11. That the debt owed to the creditor is within the prescribed minimum value of bankruptcy set out in Regulations 19 of the Insolvency Regulations. In this respect the petitioner relied on the case of In re Paul Kimani (2019) KEHC 12267(KLR) where the court held that;

The debt owed to the Creditor is within prescribed minimum value of bankruptcy set out in Regulation 19 of the Insolvency Regulation. The debt has been outstanding since judgment was entered against the Debtor, in September 2014. The length of time it has taken and the Debtor has failed to clear the debt is a clear indication of inability to pay the debt.

12. On the proposal to settle the debt in monthly instalments of Ksh.250,000/-, the Creditor submitted that that is neither here or there as nothing has been paid.

13. The Petitioner submitted that the petition has met the requisite conditions precedent to granting of a Bankruptcy Order. Counsel urged the court to allow the petition.

14. The Debtor on the other hand submitted that he does not deny owing the money claimed in the decree. He however denies that he is unable to pay the debt or that there are not reasonable prospects of paying the debt. That he has made several proposals to the creditor's advocate to settle the debt by monthly instalment of Kshs.250,000/= which is proof that he is able to settle the debt and therefore that the conditions of Section 17(2) of the *Insolvency Act* have not been met by the creditor.

15. It was submitted that the proposal to pay the debt by monthly instalments of Kshs.250,000/= means that the debtor would have satisfied the debt in less than 12 months which period is not inordinate. That a debtor cannot be said to be unable to pay his debt when he has offered a reasonable proposal for settlement.

16. I was submitted that the creditor has not demonstrated that he has taken out execution proceedings against the debtor and the warrants of execution have been returned to court unsatisfied.

17. The Debtor urged the court to dismiss the petition.

Analysis and determination

18. I have considered the grounds in support of the petition, the grounds in opposition thereto and the submissions of the respective counsels for the parties. The issue for determination is whether the application meets the threshold for issuance of a bankruptcy order.

19. The application is made pursuant to the provisions of Section 17 of the *Insolvency Act* and Regulation 15 of the Insolvency Regulations, 2016. Section 17 provides as follows:

17. Creditor may apply for bankruptcy order in respect of debtor

(1) One or more creditors of a debtor may make an application to the Court for a bankruptcy order to be made in respect of the debtor in relation to a debt or debts owed by the debtor to the creditor or creditors.

(2) Such an application may be made in relation to a debt or debts owed by the debtor only if, at the time the application is made—

(a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the prescribed bankruptcy level;



- (b) the debt, or each of the debts, is for a liquidated amount payable to the applicant creditor, or one or more of the applicant creditors, either immediately or at some certain, future time, and is unsecured;
 - (c) the debt, or each of the debts, is a debt that the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay; and
 - (d) there is no outstanding application to set aside a statutory demand in respect of the debt or any of the debts.
- (3) For the purposes of subsection (2)(c), a debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—
- (a) the applicant creditor to whom the debt is owed has served on the debtor a demand requiring the debtor to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least twenty-one days have elapsed since the demand was served, and the demand has been neither complied with nor set aside in accordance with the insolvency regulations; or
 - (b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the applicant, or one or more of the applicants to whom the debt is owed, has been returned unsatisfied either wholly or in part.
- (4) For the purposes of subsection (2)(c), a debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—
- (a) the applicant to whom it is owed has served on the debtor a demand requiring the debtor to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due;
 - (b) at least twenty-one days have elapsed since the demand was served; and
 - (c) the demand has been neither complied with nor set aside in accordance with the insolvency regulations.

20. Section 25 of the *Insolvency Act*, provides that:

- (1) The Court may make a bankruptcy order in respect of the debtor if the creditor has complied with section 7.
- (2) The Court may refuse to adjudge a debtor bankrupt if—
 - (a) the applicant creditor has not satisfied the requirements specified in section 17;
 - (b) the debtor is able to pay the debtor's debts; or
 - (c) it is just and equitable that the Court should not make a bankruptcy order.

21. In this matter the Debtor admits that he owes the Creditor the sum claimed. The money has been owing since 9th May 2024 when judgment was entered by the court against the Debtor and decree issued against him on 26th September 2024. A period of more than one year has thereby lapsed since the money became owing.

22. There is no dispute that the Creditor has served the Debtor with a statutory Demand requiring him to pay or secure the debt as required by section 17(3) of the Act. Twenty-one days have elapsed and he



has not complied with the demand. He has not made any application to set aside the statutory demand as required by section 17 (2) (d) of the Act.

23. The Debtor in this matter has made proposals to the Creditor to pay the money owing by monthly instalments of Ksh. 250,000/= per month but when he was given an opportunity to pay he did not do so. This is clear proof that he is unable to pay the debt.
24. The Debtor argued that an insolvency petition should only be sought as a last resort after other modes of execution have failed. He has not cited any law to support that argument. The Debtor having failed to comply with the statutory demand served on him, the petition is in my view properly before the court.
25. In view of the foregoing, I am satisfied that the Creditor has satisfied the requirement specified in section 17 of the Insolvency Act and I find that the Debtor herein is unable to pay his debts. Consequently, I do find merit in the petition and hereby make an order that a bankruptcy order be and is hereby made in respect of the Debtor herein, Hussein Tuneya Dado.

Order accordingly.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 20TH DAY OF NOVEMBER 2025

J. N. NJAGI

JUDGE

In the presence of:

Ms Msando holding brief for Prof. Ojienda, SC for Creditor

Ms Some holding brief for Mr. Wena for Debtor

Court Assistant – Ms Rahma

