



Fred Black Insurance Brokers Ltd v Freedom Airlines Express Ltd (Insolvency Notice E137 of 2024) [2025] KEHC 17185 (KLR) (Commercial and Tax) (20 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY NOTICE E137 OF 2024**

PM MULWA, J

NOVEMBER 20, 2025

BETWEEN

FRED BLACK INSURANCE BROKERS LTD APPLICANT

AND

FREEDOM AIRLINES EXPRESS LTD RESPONDENT

RULING

1. This ruling concerns the Notice of Preliminary Objection dated 24th March 2025 filed by Fredblack Insurance Brokers Limited (“the Respondent”) challenging the application dated 26th November 2024 filed by Freedom Airlines Express Limited (“the Applicant”). The Respondent contends that the application is a non-starter and irredeemably defective for contravening Regulation 16(1a) of the Insolvency (Corporate Insolvency) Regulations, 2020, and being filed 224 days after service of the statutory demand dated 2nd July 2024.
2. The Respondent seeks an order striking out the application as time-barred, while the Applicant seeks to stay the insolvency proceedings and set aside the statutory demand notice dated 1st July 2024 on the basis that it does not owe the premiums claimed.
3. The gist of the matter is that the Respondent facilitated the issuance of cover note no. AR003500Q dated 10th May 2022, providing insurance cover for multiple aircraft owned and operated by the Applicant. The cover included hull, spares, war, liability, and personal accident insurance effective 14th April 2022 to 13th April 2023. The policy was allegedly suspended for failure to pay outstanding premiums, and under the aviation cancellation scale, the Applicant became liable for 20% of the annual premium, amounting to USD 82,006.04. The Applicant allegedly failed to settle the sum, prompting the Respondent to issue a statutory demand notice dated 1st July 2024, served on 2nd July 2024. The



Applicant's failure to comply within 21 days renders it allegedly unable to pay its debts, invoking liquidation proceedings under Section 425(1)(b) of the *akn ke act 2015 18 Insolvency Act, 2015*.

Analysis and determination

4. The Applicant's application dated 26th November 2024 seeks to stay the insolvency proceedings and set aside the statutory demand dated 1st July 2024 on the basis that no outstanding premiums are due to the Respondent.
5. A statutory demand issued under section 17 of the *akn ke act 2015 18 Insolvency Act 2015* triggers the Insolvency process. Where a valid demand is served upon the debtor and it is not heeded within the statutory twenty-one (21) days, the debtor will be deemed as unable to pay the debt demanded.
6. Regulation 16(1) (a) of the Insolvency Regulations stipulate as follows:

“The debtor may, apply to the court for an order to set aside the statutory demand within twenty on days from the date of the service on the debtor of the statutory demand.”
7. In the instant case, it is not disputed that the statutory demand was served on 2nd July 2024, yet the application was filed on 26th November 2024, 224 days later. This is manifestly beyond the 21-day limit prescribed under Regulation 16(1)(a). The Court notes that this time limit is mandatory, and any application filed outside the period without leave of the Court and without explanation for the inordinate delay is incurably defective (see *Development Bank of Kenya Ltd v Samuel Kazungu Kambi [2021] KEHC 12733 (KLR)*).
8. While courts may, in exceptional circumstances, exercise discretion to extend time, such indulgence requires a credible explanation for the delay and a prayer for leave to file out of time, as observed in *Mihrab Development Ltd v Cementers Ltd [2023] eKLR*. In the present matter, no such explanation or prayer has been provided.
9. The Applicant's application mainly seeks that the statutory demand dated 1st July 2024 be set aside and stay the insolvency proceedings. Paragraph 6 of Regulation 17 of the Insolvency Regulations, 2016 provides for the circumstances under which a Statutory Demand may be set aside 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 the creditor holds some security in respect of the debt claimed by demand, and either paragraph (6) is not complied with 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 debt ought to be set aside.
4. In the present case, having found that the application is incurably defective for being filed out of time without leave and without explanation, the Court finds it unnecessary to consider the merits of the application. The procedural defect alone is sufficient to dispose of the matter.
5. In light of the foregoing, the Court finds that the application dated 26th November 2024 is time-barred, fatally defective, and cannot be entertained. The Notice of Preliminary Objection dated 24th March 2025 is therefore upheld, and the application is struck out.
6. Costs shall follow the event.



It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 20TH DAY OF NOVEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Gisemba h b for Mr. Miano for Creditor

Mr. Dadu h b for Mr. Nyarabu for Debtor

Court Assistant : Carlos

