



REPUBLIC OF KENYA



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**Malombo t/a O. M. Robinson & Co. Advocates v Liya M. E. Contractors Limited
(Insolvency Cause E001 of 2024) [2025] KEHC 17428 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17428 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
INSOLVENCY CAUSE E001 OF 2024**

M THANDE, J

NOVEMBER 28, 2025

BETWEEN

**ROBINSON ONYANGO MALOMBO T/A O. M. ROBINSON & CO.
ADVOCATES CREDITOR**

AND

LIYA M. E. CONTRACTORS LIMITED DEBTOR

RULING

1. By an Application dated 5.8.24, the Debtor seeks temporary injunctive orders stopping the Creditor from presenting, filing, serving and/or advertising any winding up petition in respect of the alleged debt. The debtor also seeks the setting aside of the statutory notice dated 12.6.24.
2. The Debtor's case is that the debt in question is disputed and was subject to litigation in Malindi High Court Miscellaneous Application No. E006 of 2021 until a ruling was delivered on 3.7.24. The Debtor contends that the Creditor ought to have instructed auctioneers to execute the warrants of attachment rather than filing a statutory notice. The debtor is thus apprehensive that the Creditor will publish the liquidation notices and initiate liquidation proceedings which will cause irreversible and irreparable injury to the Debtor's reputation and business.
3. The Application is opposed by the Creditor vide his replying affidavit sworn on 2.9.24. He averred that he represented the Debtor in Kilifi SMCC No. 276 of 2019 against the County government of Kilifi & 2 Others. The Creditor proceeded to have his advocate/client bill of costs taxed at Kshs. 388,904/= on 25.5.22. No reference was filed in respect of the taxed amount and judgment was entered on 20.9.22. Thereafter, the Creditor took out warrants of attachment. The Debtor filed an application dated 28.11.22 for stay execution and setting aside of the certificate of taxation but the same was dismissed on 3.7.24. The Creditor filed insolvency notice on 12.6.24 which was served on the Debtor on 19.7.24. By the time he was served with the present Application on 15.8.24, he had already filed the insolvency petition on 14.8.24. The Creditor contends that he attempted other modes of execution to



no avail. Further that the amount is not disputed and the Debtor has already paid Kshs. 150,000/= in respect thereof. He asserted that the Application is intended to delay payment of professional fees.

4. It is a principle of insolvency law that a disputed debt on substantial and bona fide grounds cannot be the subject of a winding-up proceedings. A party challenging an insolvency petition on the ground that the debt in question is disputed, must discharge the burden of proof placed upon him to demonstrate on substantial grounds that the debt is disputed.
5. In *Flower City Limited v Polytank & Containers Kenya Limited* [2021] eKLR, Mativo, J. (as he then was) stated:
 18. The burden was for the debtor company to show a fairly arguable basis for setting aside the statutory demand. The court could set aside a statutory demand if it was satisfied that there was a genuine dispute about the existence of the debt; or if the court was satisfied that there was a genuine dispute about the amount of the debt, so much of that amount as the court was satisfied was not the subject of such a dispute.
6. The debt herein arises from a taxation of an advocate/client bill of costs. Paragraph 11 of the Advocates Remuneration Order provides as follows:
 1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 3. ...
7. A party seeking to challenge the decision of a taxing officer is required to, within 14 days thereof, give notice in writing to the taxing officer of the items of taxation to which he objects and thereafter file a reference before a judge. The certificate of taxation is dated 25.5.22. There is no evidence of any objection filed before the taxing officer or reference filed before this Court. Judgment in respect of the certificate of taxation was entered way back on 20.9.22, there being no objection to the taxation.
8. In *Machira & Co. Advocates vs Magugu* [2002] 2 EA 428 Ringera, J. (as he then was) affirmed that it is a reference that taxation may be challenged. He stated:

As I understand the practice relating to taxation of bills of costs, any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a Reference to a judge in accordance with paragraph 11 of the Advocates Remuneration Order.
9. This decision was upheld by the Court of Appeal in *Machira & Co. Advocates v Arthur K. Magugu & another* [2012] eKLR where the Court of Appeal stated:

With regard to advocates' bills of costs, we agree with the decision of Ringera J (as he then was) in *Machira vs Magugu*[1] that the Advocates Remuneration Order is a complete code which does not provide for appeals from taxing master's decisions. Rule 11 thereof provides for ventilation of grievances from such decision through references to a judge in chambers.



10. Other than making a general statement that the debt is disputed, the Debtor has not stated what in the debt is disputed. Without having challenged the taxation by way of a reference, the Debtor cannot now be heard to say that the debt is disputed. He squandered the opportunity to challenge the same in 2022 when taxation was done. The debt has remained unpaid to date.

11. In *Universal Hardware Limited v African Safari Club Limited* [2013] eKLR, Asike-Makhandia, JA stated:

Payment had been demanded over a period of time albeit unsuccessfully leading to the issuance of the statutory demand. It was only a day to the filing of the petition that the respondent for the very first time disputed the debt. To the appellant, in disputing the debt at that late hour was not an act of good faith but was merely calculated to delay the payment. The principle as I understand it is that a disputed debt on substantial and bona fide grounds cannot be the subject of a winding-up proceedings on account of the company's inability to pay its debts. The case law and scholarly writings are categorical that a creditor's petition should not be entertained if it is to enforce a debt that is disputed and the company is solvent, otherwise it will be treated as a scandalous and abuse of the process of the court and will be struck out on that basis.

12. Similarly, in this case, the Creditor has demonstrated that that he has demanded payment since 2022 and even commenced execution proceedings which the Debtor attempted to thwart by applying for stay execution and setting aside of the certificate of taxation. It would appear that it is the filing of the statutory notice dated 12.6.24, that provoked the present Application.

13. In *Re: Global Tours and Travels Limited* [2001] EA 195, the principle that a winding up petition where a debt is disputed cannot be entertained was reiterated. The Court stated:

[I]n entertaining a petition to wind up a company on account of non-payment of debts, the court must be satisfied that the debt is not disputed on substantial grounds and is bona fide. If it is, then the winding up proceedings are not the proper remedy. The substantial dispute must be the kind of dispute that in an ordinary civil case will amount to a bona fide, proper or valid defence and not a mere semblance of a defence. It is not sufficient for a company to merely say for instance that we dispute the debt. The company must go further and demonstrate on reasonable grounds why it is disputing the debt.”

14. Without any reasonable or substantial grounds, the claim by the debtor herein that the debt is disputed appears to be calculated to delay payment and is rejected. More so because of the conduct of the Debtor.

15. The circumstances herein are that the insolvency petition has already been filed and served. In the premises, the Application for injunctive orders stopping the Creditor from presenting, filing, serving and/or advertising any winding up petition and the setting aside of the statutory notice has been overtaken by events.

16. In the end, and in view of the foregoing, the Application dated 5.8.24 lacking in merit is dismissed with costs to the Creditor.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 28TH DAY OF NOVEMBER 2024

M. THANDE

JUDGE

