

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
INSOLVENCY PETITION NO. E038 OF 2023

PRIDE DRIVE LIMITED.....
.....PETITIONER

VERSUS

ADRIAN KENYA LIMITED.....
RESPONDENT

JUDGMENT

1. By Petition dated 13th June 2023, the Petitioner filed a Liquidation Petition seeking the following orders:
 - i. That the Court makes an order for the liquidation of Adrian Kenya Limited.*
 - ii. Make such orders as may be necessary and just.*
 - iii. The costs of the Petition be awarded to the Petitioner.*
2. The Petition is accompanied by the Official Receiver’s Certificate of Compliance dated 14th June 2023.
3. The Petitioner avers that the Respondent is indebted to it in the sum of Kshs. 3,557,814.85, being the balance of the contractual sum for car rental services rendered, together with interest at 2% per month as agreed. It is contended that a statutory demand was duly served upon the Respondent pursuant to section 384 of the Insolvency Act, 2015, but the same was not honoured within the prescribed twenty-one (21) days, hence this Petition.

4. The Petition is opposed. The Respondent filed a Replying Affidavit sworn on 30th October 2023 by its legal counsel, Samantha Mugo, contending that the Petition is frivolous, vexatious, and an abuse of the court process, intended to tarnish the company's reputation. It is averred that the parties entered into a written contract dated 2nd June 2022, which contains an arbitration clause requiring any dispute to be referred to arbitration.
5. The Respondent further contends that the alleged debt is disputed and that the Petitioner has failed to demonstrate that the company is unable to pay its debts or to furnish a statement of financial position showing insolvency.
6. The Petition was canvassed by way of written submissions. The Respondent, in its submissions, reiterated that the outstanding balance, which it pegs at Kshs. 2,357,814/= is not denied but is the subject of reconciliation. It maintains that it has shown good faith by making part payments and proposes to settle the outstanding sum by monthly instalments of Kshs. 100,000/=. The Respondent submits that a winding-up petition should not be used as a debt collection tool or as a means to exert undue pressure on a company.
7. The Petitioner, on its part, submits that the Respondent has admitted the debt and has failed to demonstrate solvency or ability to pay. It argues that despite being served with a statutory demand, the Respondent has not settled the amount or provided a reasonable explanation for non-

payment, thereby meeting the threshold of inability to pay its debts under section 384(1)(a) of the Insolvency Act.

8. The issue of this Court's jurisdiction to entertain the matter was settled in a ruling delivered on 13th February 2025, wherein the Court held that it is duly vested with jurisdiction to determine the Petition.
9. I have considered the petition, the affidavits in support as well as the annexures thereto. I have also examined the parties' written submissions. The petition seeks to liquidate the company.
10. **Section 384(1) and (2) of the Insolvency Act** provide as follows:

“(1) For the purposes of 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)."

11. At **Section 424(1)** of the Act:

"A company may be liquidated by the court if:

(a) the company has by special resolution resolved that the company be liquidated by the court;

(b) being a public company that was registered as such on its original incorporation:

(i) the company has not been issued with a trading certificate under the Company Act 2015; and

(ii) more than twelve months has elapsed since it was so registered;

(c) the company does not commence its business within twelve months from its incorporation or suspends its business for a whole year;

- (d) except in the case of a private company limited by shares or by guarantee, the number of members is reduced below two;***
- (e) the company is unable to pay its debts;***
- (f) at the time at which a moratorium for the company ends under section 645—a voluntary arrangement made under part IX does not have effect in relation to the company; or***
- (g) the court is of the opinion that it is just and equitable that the company should be liquidated.”***

12. The object of a liquidation petition is not to enforce payment of a disputed debt but to ascertain whether a company is insolvent. In **Re Equity Bank Kenya Limited & Another v Capital Construction Limited [2017] eKLR**, the Court held that:

“A winding-up petition should not be used as a means of exerting pressure to pay a disputed debt. The jurisdiction of the Court is invoked only where there is evidence of insolvency or inability to pay debts.”

13. On the basis of the evidence, the Respondent has not denied the existence of the contractual relationship or the receipt of services. Indeed, it concedes partial indebtedness and proposes a payment plan. This admission of

indebtedness, albeit partial, is an acknowledgment of financial difficulty. I find that there is sufficient evidence that the Respondent is unable to settle its debts.

14. In the case of **Pride Inn Hotels and Investments Limited v Tropicana Hotels Limited [2018] eKLR**, the Court of Appeal had this to say on the issue of liquidation:

“This was clearly the case herein since the appellant did not make any payments after being served with a notice of demand by the respondent. Hence the respondent was entitled to bring a petition for liquidation of the appellant on the ground of its inability to pay its debt. Equally, I find no fault on the part of the learned Judge for issuing the liquidation order. There is no requirement under the Insolvency Act or the Company Act, which stipulates that liquidation of a company should be as a last resort. Liquidation is one of the options under the Insolvency Act which a creditor such as the respondent in the case, could pursue to secure payment of a debt, especially a debt that remains unpaid for several years and in respect of which the appellant has been given adequate time, opportunity and indulgence.”

15. In the instant case, the Respondent has made bare assertions of being financially capable and “desirous of settling” the debt but has not annexed any financial statements, audited accounts, or bank records to

demonstrate that it remains a going concern or is able to pay its debts as they fall due. Such omission is not a mere technicality but goes to the very substance of the company's defence. The Court cannot infer solvency from mere promises or proposals to pay in instalments without supporting financial material.

16. In view of the foregoing, I find that there is sufficient evidence to grant the prayers sought. The Petition is hereby allowed and I make the following orders:

- i. That Adrian Kenya Limited be and is hereby placed under liquidation pursuant to section 425 of the Insolvency Act, 2015.***
- ii. The Official Receiver is hereby appointed as the Provisional Liquidator of the company to take immediate custody of the company's assets and affairs.***
- iii. Costs of the Petition are awarded to the Petitioner.***

JUDGMENT delivered virtually, dated and signed at **NAIROBI**

This **24th** day of **November** 2025.

P.M. MULWA

JUDGE

In the presence of:

Ms. Mogaka h/b for Mr. Muriuki for Petitioner

Mr. Ongaya for Respondent

Court Assistant: *Carlos*