

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**INSOLVENCY NOTICE NO. E184 OF 2024**

**AND**

**IN THE MATTER OF JOSHUA ODONGO ORON**

**AND**

**IN THE MATTER OF THE INSOLVENCY ACT(CHAPTER 53 - LAWS  
OF KENYA)**

**BETWEEN**

**NAIROBI ENTERPRISES LIMITED.....**  
**PETITIONER**

**AND**

**JOSHUA ODONGO**  
**ORON.....RESPONDENT**

**RULING**

1. By the Notice of Motion dated 19<sup>th</sup> September 2024, the Respondent seeks to have the Statutory Demand issued against him by the Petitioner on 19<sup>th</sup> July 2024 set aside. This application is supported by the Respondent's affidavit sworn on 19<sup>th</sup> September 2024 and it is opposed by the Petitioner through the replying affidavit of its director, RAJAN DHANANI sworn on 9<sup>th</sup> October 2024.

The application has been canvassed by way of written submissions that I have considered and I will be making relevant references to them in this ruling.

2. From the parties' pleadings and submissions, the main issue falling for determination is whether the Statutory Demand ought to be set aside. **Section 26** of the ***Insolvency Act*** grants the court discretion to stay an application by a creditor on such terms, and for such period, as the Court considers appropriate. Further, **Regulations 16** and **17** of the ***Insolvency Regulations, 2016*** provides as follows:

**16. Application to set aside statutory demand**

*(1) The debtor may, apply to the Court for an order to set aside the statutory demand—*

- (a) within twenty-one days from the date of the service on the debtor of the statutory demand; or*
- (b) if the demand has been advertised in a newspaper, from the date of the advertisement's appearance or its first appearance, whichever is the earlier.*

*(2) Subject to any order of the Court under regulation 17 (7), time limited for compliance with the statutory demand shall cease to run from the date on which the application is lodged with the Court.*

(3) *The debtor's application shall be in Form 7 set out in the First Schedule and shall be supported by an affidavit, which shall be in Form 8 set out in the First Schedule.*

(4) *The affidavit referred to under paragraph (3) shall—*

- (a) specify the date on which the statutory demand came into the debtor's possession;*
- (b) state the grounds on which the debtor claims that it should be set aside; and*
- (c) annex a copy of the statutory demand.*

### **17. Hearing of application to set aside statutory demand**

(1) *On receipt of an application under regulation 16, the Court may, if satisfied that no sufficient cause is shown for granting the statutory demand, dismiss the application without giving notice to the creditor.*

(2) *The time limited for compliance with the statutory demand shall commence from the date on which the application is dismissed.*

(3) *If the application is not dismissed under paragraph (1), the Court shall fix a date and venue for it to be heard, and shall give at least seven days' notice to—*

- (a) the debtor or, if the debtor's application was made by an advocate acting for him, to the advocate,*
- (b) the creditor; and*
- (c) any other person who is named in the statutory demand as the person whom the debtor may enter into communication with in reference to the statutory*

demand or, if more than one person is named, the first person to be named.

(4) Where the creditor responds to the application, the creditor shall serve the response upon the debtor and the Court at least three days before the date of hearing of the application.

(5) On the hearing of the application, the Court shall consider the evidence before it, and may either summarily determine the application or adjourn it, and shall give such directions as it considers appropriate.

(6) The Court may grant the application if—

(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 that the creditor holds some security in respect of the debt claimed by the demand, and either paragraph (6) is not complied with in 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 demand ought to be set aside.

.....

(9) If the Court dismisses the application, it shall make an Order authorising the creditor to present a bankruptcy

*application either immediately or on or after a date specified in the Order.*

*(10) The Registrar of the Court shall, after the Court has made an order under paragraph (8), send a copy of the Order to the creditor. [My Emphasis]*

3. **Regulation 17(6)** above outlines the grounds upon which the Respondent's application may be allowed which from his deposition and submissions is that the debt is disputed, the Statutory Demand is defective, malicious, premature, and amounts to an abuse of the court process. The Respondent avers that the Petitioner is trying to recover the same debt from multiple sources contrary to prior agreements and a prior consent order. However, going through the rival depositions, it is my finding that the debt is not substantially disputed as averred by the Respondent for a number of reasons.
4. First, whereas the Respondent claims that he is merely a guarantor and that the principal debtor is the *Port Florence Community Hospital* that should be pursued, the Consent Judgment recorded in **Nairobi CMCC No. 5181 of 2017** on 1<sup>st</sup> March 2018 tells a different story. The Consent entered judgment against "the Defendants" which included the Hospital, the Respondent herein and the said Dr. Hezron Mc'Obewa. From the wording of the Consent, it is implied that the judgment is against the said

defendants, jointly and severally, meaning the Petitioner is legally entitled to recover the entire debt from any one of them, regardless of their original roles as principal or guarantor. With that Consent, the Respondent can no longer argue from the position of a guarantor under an earlier 2017 Deed, but as a judgment debtor under the 2018 Consent Order.

5. Second, a "substantial dispute of debt" often requires a bona fide argument over whether the money is owed at all or over the specific calculation of the amount. It is not enough to merely dispute the debt; the party must go further and demonstrate on reasonable grounds why they are disputing it (see **Kevian Kenya Limited v Hipora Business East Africa Limited [2025] KECA 1195 (KLR)**). That is not the case here. The Respondent does not deny that the original debt existed or that he was a party to the initial Deed of Settlement and the subsequent Consent Judgment. Both parties acknowledge that payments have been made, albeit slowly. The dispute is not about the debt itself but about the manner of enforcement and from which party the Petitioner should seek payment.
6. Third, the Petitioner provides a compelling argument that has not been controverted that the Respondent himself breached the

Consent Judgment by failing to deliver the Certificate of Lease as security. I agree that a party cannot benefit from a contract they have themselves breached. Fourth, the Petitioner has annexed email correspondence showing a continuous record of demands and acknowledgments of default.

7. Fifth, whereas the Respondent claims that the Petitioner is seeking to be paid twice, this as I have stated, is legally countered by the principle of joint and several liability. The Petitioner explicitly depones its intention is to recover the debt in full, not more than in full. If the Respondent is forced to pay, his recourse would be to claim contribution from his co-debtors, that is, the Hospital and Dr. Hezron and not to allege that the Petitioner is recovering the debt multiple times over.
8. In sum, it is my finding that the dispute is not about the existence of the debt or the Respondent's ultimate liability under the Consent Judgment. Instead, it centers on the Petitioner's choice of enforcement against one of several joint debtors. Therefore, while there is a clear and heated dispute over the fairness and strategy of the enforcement, it does not rise to the level of a "substantial dispute" over the debt itself that would automatically invalidate the statutory demand.

9. For the reasons stated above, I find that the Respondent's application dated 19<sup>th</sup> September 2024 lacks merit and it is hereby dismissed with costs. The Petitioner is directed to file an application for Bankruptcy within 21 days of this ruling.

**DATED SIGNED and DELIVERED virtually at NAIROBI this  
1<sup>ST</sup> DAY of DECEMBER 2025**

.....  
**J.W.W. MONGARE  
JUDGE**

**IN THE PRESENCE OF**

1. Ms. Odhiambo for the Petitioner.
2. Ms. Okaka for the Respondent/Applicant.
3. Ivan - Court Assistant