



REPUBLIC OF KENYA



**In re James Njuguna Nganga (Petitioner) (Commercial Insolvency
E003 of 2025) [2026] KEHC 2 (KLR) (6 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 2 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
COMMERCIAL INSOLVENCY E003 OF 2025**

RN NYAKUNDI, J

JANUARY 6, 2026

JAMES NJUGUNA NGANGA PETITIONER

RULING

1. Before this court is an Insolvency Petition lodged before this court by a way of an Affidavit which in its totality states as follows;
 - a. I, James Njuguna Nganga of P.O. 9711 Eldoret, lately residing at Thika and carrying on business at Thika, having for the greater part of the past six months resided at Thika [and carried on business at Eldoret.] within the jurisdiction of the Court, and being unable to pay my debts, hereby petition the Court that a Bankruptcy Order be made in respect of my estate and that I may be adjudged bankrupt.
2. The Petition is supported by an Affidavit sworn by the Petitioner which deponed as follows;
 - a. That I am the Petitioner herein and therefore competent to swear this affidavit in support of my petition for a Bankruptcy Order under the *Insolvency Act*, Cap 30, Laws of Kenya.
 - b. That I have assessed my financial position and confirm that I am unable to meet my debt obligations. This has led me to seek relief through bankruptcy as provided under the *Insolvency Act*.
 - c. That my assets are minimal, amounting to approximately Kshs 60,000.00 in total, as detailed in my Statement of Affairs (Form No. 11). These assets include personal effects, a boda-boda motorcycle (KMFC 344J), and household furniture, all essential for my basic livelihood.
 - d. That my total liabilities amount to Kshs 9,287,900.00, comprising unsecured debts owed to various creditors, including individuals, business suppliers, and financial institutions. This amount significantly exceeds my realisable assets.



e. That my monthly income from operating the boda-boda business averages Kshs 20,000.00, allocated as follows:

Food: Kshs 5,000.00

Rent: Kshs 5,000.00

Utilities (Electricity and Water): Kshs 2,500.00

Boda-Boda Maintenance: Kshs 1,000.00

Miscellaneous Expenses: Kshs 6,500.00

Consequently, my income covers only essential living expenses, leaving no surplus for debt repayment.

f. That my financial distress has worsened due to prevailing adverse economic conditions, rising costs, high-interest debt obligations, and business losses. My motor vehicle (KAN 120P) was also recently seized by a creditor, Khetia Garments Limited, in partial debt settlement, reducing my earning capacity further.

g. That I have exhausted all alternative sources of financial assistance and am unable to secure additional funds or credit to meet my debt obligations.

h. That in light of the above circumstances, I seek the protection of this Honourable Court under the *Insolvency Act*, to prevent further legal action by creditors and enable an orderly management of my financial affairs through the appointment of a Bankruptcy Trustee.

i. That I request the appointment of a Bankruptcy Trustee who will oversee my financial matters, ensuring that any surplus income, if available, goes towards settling my debts while allowing me to retain essential means for basic living expenses.

j. That I confirm that this petition is submitted in good faith, driven by genuine financial hardship, without any intent to unjustly evade my obligations.

k. That I am willing to comply with any directives issued by the Court or Bankruptcy Trustee to periodically review my financial situation and engage in financial counseling to assist in the proper management of my finances, with the aim of eventual discharge if conditions for release are met.

l. That I swear this affidavit in support of my petition for a Bankruptcy Order, confirming that all the facts herein are true to the best of my knowledge, information, and belief, and that I am committed to fulfilling my obligations under the *Insolvency Act*.

3. This is a matter since 29th May 2025 the Petitioner has done absolutely nothing to take any step to prosecute the Petition under the *Insolvency Act*. That is in so far as the steps taken by the Applicant are concerned. Therefore, in terms of Section 1A, 1B, 3, 3A of the *Civil Procedure Act* as read with Order 17 Rule 1 & 2 of the Civil Procedure Rules this court is empowered with discretionary jurisdiction to order dismissal of a suit for want of prosecution. Upon focusing on inordinate delay which is not justifiable and is also inexcusable.

4. The following cases are on point as to the guiding principles on dismissal of suits for want of prosecution. In the case of *Ivita vs Kyumbu* [1984] KLR 441: This case is a foundational authority outlining factors such as whether the delay is prolonged and inexcusable, if justice can still be done for all parties, whether the opposing side would be prejudiced, and if there are sufficient reasons for



the delay. Also, in *Savings & Loans Limited vs Susan Wanjiru Muritu Nairobi HCCC 397/2002*: This judgment highlighted the litigant's responsibility to pursue their case and stay updated on its progress. In addition, in *John Nahashon Mwangi vs Kenya Finance Bank Limited (in Liquidation) [2015] eKLR*: This case emphasized that constitutional principles of justice and the "oxygen principle" must be considered. Dismissal is seen as a serious step, and the right to be heard should be protected when possible. Whereas, *Olumbe vs Obanyi [2025] KEHC 5386 (KLR)*: A recent case that reaffirmed the court's discretion and the need for a litigant to fully explain the period of inaction. Lastly in *Murathi & 15 others vs County Government of Murang'a & 3 Others [2025] KEHC 2359 (KLR)*: This ruling states that the court's power is discretionary and must be used fairly, noting that a long, unexplained delay can indicate a lack of diligence and an abuse of court processes.

5. In so far as the law is concerned pursuant to Order 12 Rule 3(1) of the Civil Procedure Rules, this Petition sits on sinking sand and the same should be dismissed which I hereby do with no orders as to costs.
6. It is so ordered

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 6TH DAY OF JANUARY 2026

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R. NYAKUNDI
JUDGE

