

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**HCIC NO. E028 OF 2023**

**DR.ALFRED OTIENO ODHIAMBO.....DEBTOR/  
APPLICANT**

**VERSUS**

**MEDUPROF-  
SBV.....PETITIONER/  
RESPONDENT**

**RULING**

- 1.Through the ruling dated 16.1.2025, the debtor/  
applicant was adjudged bankrupt upon the court  
finding that he was unable to pay his debts.
  
- 2.The debtor subsequently filed the notice of motion  
dated 3.2.2025 seeking the review or setting aside of  
the ruling of 16.1.2025 and the striking out of the  
petition dated 15.8.2023 from the court record for  
forgery and material non-disclosure of cogent facts  
before the court.
  
- 3.The application is brought primarily under **Order 45 of  
the Civil Procedure Rules**. It is based on the ground

of discovery of new and important matter after the exercise of due diligence.

4.The application is supported by the affidavit sworn by the debtor on 3.2.2025. The main grounds are that the debtor was never served with the statutory demand and any signature appended confirming receipt of the said demand is a forgery contrary to **section 345** as read with **section 349 of the Penal Code**. That the court lacked jurisdiction to entertain the petition as the accompanying statutory demand was fatally defective. That the averment that the court found that the petitioner had complied with the procedural requirements and/ or administrative action, based on a checklist of compliance cannot override the statutory requirement of service of a statutory demand.

5.The petitioner/ creditor opposed the application through a replying affidavit sworn by its managing director, **Willem Van Prooijen** on 11.4.2025. It was contended

that the application ought to be dismissed for want of merit.

6.The petitioner asserted that the statutory demand was personally served upon the debtor who appointed **Alakonya Advocates** who represented him in the bankruptcy proceedings.

7.The petitioner faulted the debtor for filing the application after the bankruptcy ruling, arguing that it is dishonest and that the timing points to his intention to further delay its enjoyment of the fruits of its judgment.

8.The petitioner argued that the debtor had the opportunity to but failed to provide the new-found evidence before the hearing. It also argued that the debtor has not attached proof of the newly discovered and important evidence.

### **Analysis and Determination**

9.The issue for determination is whether the applicant has met the threshold for review of the ruling dated

16.1.2025 based on the discovery of new or important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made.

**10. Order 45 Rule 1 of the Civil Procedure Rules**

provides that one of the grounds upon which review may be ordered by the court to be; discovery of new and important matter or evidence which, after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or the order made.

**11. Service of the statutory demand has been challenged.**

However, according to the petitioner, the statutory demand dated 30.6.2023 was personally served upon the debtor on 13.7.2023.

**12. The petitioner exhibited an affidavit of service sworn**

on 18.7.2023 by **Robert K. Mutuku**, an authorised court process server, to the effect that he effected

service upon the debtor at **Upper Hill DAMIC Centre** at around 3.06 PM on 13.7.2023.

13.The petitioner also exhibited the statutory demand notice containing the debtor's name, signature and date of acknowledgment.

14.The debtor contended that he was never served with the statutory demand and that any signature appended confirming receipt of the said demand is a forgery.

15.The debtor exhibited a copy of the occurrence book (OB) no. 37/17/2025 from **Capitol Hill Police Station** dated 17.2.2025. He also exhibited a copy of the forensic document examination report dated 5.2.2025 by **Smarteye Technology and Consultancy Ltd.**

16.According to the forensic document examiner, **Emmanuel Kenga**, there is no agreement between the debtor's known OR specimen signature and the signature on the statutory demand.

17.The record shows that the firm of **Alakonya & Associates Advocates** was appointed by the debtor

and put in its notice of appointment dated 27.11.2023 on 1.12.2023.

18. Thereafter, the debtor participated in the bankruptcy proceedings.

19. In its submissions, the debtor challenged the petition based on the non-service of the statutory demand. He contended that the statutory demand issued bore a different case number, being **IN E077 of 2023** and faulted the creditor for using that demand to satisfy the procedural requirement in this matter.

20. In the ruling of 16.1.2025, the court considered the debtor's argument that the creditor failed to serve him with the statutory demand and applied **sections 17 and 25 of the Insolvency Act** to find that the creditor had satisfied the procedural requirements. The court also found that there was proof of service of the statutory demand evidenced by an affidavit of service.

21. An affidavit of service is presumed to be *prima facie* proof of service unless rebutted by credible evidence.

**Shadrack Arap Baiwo v Bodi Bach  
[1987] KECA 69 (KLR) and Ngure v Embakasi  
Ranching Company Limited & 4 others  
(Environment and Land Case E125 of 2022)  
[2025] KEELC 8073 (KLR) (20 November 2025)  
(Ruling)**

22.The case number appearing on the statutory demand was for the insolvency notice case file. The debtor has not demonstrated that the debt is disputed on substantial grounds, that the different case number on the demand affected the nature of the debt or the consequences of non-compliance.

23.Therefore, the court finds that the fact that the statutory demand issued bore a different case number does not warrant the setting aside of the ruling.

### **Service**

24.I now turn to consider the debtor's denial of service and claim that the signature of acknowledgement is a forgery.

25. In my view, the claim of forgery of the debtor's signature is not a new matter or evidence that could not have been discovered by him before the bankruptcy ruling.

26. The statutory demand was served upon the debtor on 13.7.2023. The liquidation petition was served upon him on 22.11.2023.

27. However, the issue of forgery of signature was not raised by the debtor before the ruling either in his replying affidavit, written submissions or otherwise.

28. The debtor's submissions in response to the petition show that he was privy to the statutory demand before the ruling was issued. However, he did not raise the issue of forgery of his signature. Yet, this is such a grave matter that ought to have so mattered to him then as he says it does now. He has not satisfactorily explained why he did not raise the issue of forgery of his signature when responding to the petition. There is no plausible explanation why the

debtor did not raise the issue of forgery, yet he was privy to the statutory demand that bore the acknowledgement signature. Thus, the alleged forgery was within his knowledge at the time of replying to the petition and throughout the proceedings.

29. Therefore, in my considered opinion, there is no discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made.

30. From the above, the court finds that the debtor has not met the threshold for review of the ruling of 16.1.2025.

31. In addition, the delay in bringing up the issue of the alleged forged signature does lend credence to the petitioner's claim that the application is meant to delay it from enjoying the fruits of its judgment.

## **Disposal**

32. In conclusion, the upshot is that the debtor's application dated 3.2.2025 is dismissed with costs for want of merit.

**Dated, signed and delivered at Nairobi this 22<sup>nd</sup> day of January, 2026 through Microsoft Teams online application**

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**F. Gikonyo M**

**Judge**

**In the presence of:**

**Ms. Sharamu for Gikonyo Gitau for Petitioner**

**Korir for Official Receiver**

**CA- Godfrey**