



**Pampa Grill Limited & another v North Lake Limited (Insolvency Notice E158 of 2023)
[2026] KEHC 271 (KLR) (Commercial and Tax) (20 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 271 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY NOTICE E158 OF 2023
MA OTIENO, J
JANUARY 20, 2026**

BETWEEN

PAMPA GRILL LIMITED 1ST CREDITOR

**PAMPA CHURRASCARIA (UNDER ADMINISTRATION) LIMITED 2ND
CREDITOR**

AND

NORTH LAKE LIMITED DEBTOR

RULING

1. Before me for determination is the Applicant/Debtor's application dated 8 January 2024, brought under Regulations 16 and 17 of the Insolvency Regulations, 2016, wherein the Applicant seeks the setting aside of the Statutory Demand issued by the Creditors/Respondents on 7 December 2023.
2. The Statutory demand seeks payment of an outstanding judgment debt (Kshs. 26,554,803), arising from the decision delivered on 10 June 2021 in ELC Case No. 73 of 2018, which remains unsatisfied to date.
3. The factual background giving rise to the present application is that, following the Environment and Land Court Case No. 73 of 2018, Pampa Grill Limited & Pampa Churrascaria (Under Administration) Limited v North Lake Limited & Buena Bizz Limited, the Debtor/Applicant moved the ELC Court by an application dated 20 December 2021, seeking to set aside the said judgment.
4. The application for setting aside was considered and dismissed on 11 May 2023, with the trial court finding no merit in the grounds advanced. It is common ground that no appeal has been preferred against either the judgment of 10 June 2021 or the ruling of 11 May 2023.



5. On 8 January 2024, the Debtor filed the present motion seeking to set aside the statutory demand. The application is premised on the grounds that the debt is disputed and that the statutory demand is defective. The Applicant invoked Regulations 16 and 17 of the Insolvency Regulations, 2016.
6. The Creditors (Pampa Grill Ltd and Pampa Churrascaria Ltd under administration), on their part, oppose the Debtor's application vide Grounds of Opposition dated 22 April 2024.
7. The Creditor's primary contention is that the debt, which arises from a final judgment in Nairobi ELC No. 73 of 2018, delivered on 10 June 2021, is not disputed.
8. The Application was canvassed by way of written submissions. The Applicant, through TrippleOKLaw LLP, Advocates, filed its submissions dated 30 June 2025, while the Respondent's submissions were filed by their Advocates, Mutua Nyongesa Muthoka Advocates, on 27 June 2025.

Analysis and Determination

9. Having considered the application, the statutory demand dated 7 December 2023, the parties' affidavits and submissions, the authorities cited, and the law, I find that the main issue for determination is whether the Debtor/Applicant has made out a case for setting aside the statutory demand.
10. Regulation 17 (6) of the Insolvency Regulations, 2016, sets the conditions to be met before an order of setting aside of a statutory demand is issued, as follows: -

“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.”
11. From the above, it is clear that the Regulation confines the Court's jurisdiction to setting aside a statutory demand to four grounds only, namely: where there is a counterclaim/set-off/cross-demand equal to or exceeding the debt; or where a debt is genuinely disputed on substantial grounds; or where security equal to or exceeding the debt; or where other sufficient reason.
 12. The central issue in this case is whether the Applicant has established a “genuine dispute” under Regulation 17(6)(b). In *Flower City Limited v Poly tanks & Containers Kenya Limited* [2021] KEHC 34 (KLR), the Court held that a genuine dispute must exhibit objective and prima facie plausibility, sufficient factual particularity, and be more than mere bluster or assertion. Disputes that are spurious, hypothetical, illusory, misconceived, vexatious, or frivolous do not meet the threshold. The learned judge stated as follows: -

“A reading of the above provision leaves no doubt that the existence of a genuine dispute regarding the debt is a sufficient ground for the court to set aside a Statutory Demand. The policy underlying this provision is that the Statutory Demand procedure should not be used



to coerce a person to pay a disputed amount. Put differently, the court must be satisfied that there is a dispute that is not plainly vexatious or frivolous. The court must be satisfied that there is a claim that may have some substance. Talking about a claim that has substance, it is important to mention that it is often possible to discern the spurious, and to identify mere bluster or assertion. A dispute that has substance should have a sufficient objective and prima facie plausibility to distinguish it from a merely spurious claim, bluster or assertion, and sufficient factual particularity to exclude the merely fanciful or futile.”

13. The above test aligns with the “real prospect of success” standard used when a court is called upon to set aside a summary judgment. The insolvency court may, and sometimes must, examine the evidence closely to weed out contrived disputes.
14. In the present case, it is not controverted that the alleged “dispute” is in respect of a judgment debt arising from Nairobi ELC Case No. 73 of 2018, determined on 10 June 2021. It is also not contested that the Debtor’s application for setting aside the judgment was dismissed by the ELC Court vide a ruling of 11 May 2023.
15. Further, the Creditors’ submissions confirm—and the Applicant does not controvert—that no appeal lies against either the judgment of 10 June 2021 or the ruling of 11 May 2023. The Applicant’s present application, therefore, appears to be an attempt to re-open issues already determined by a court of competent jurisdiction.
16. It is settled that where, as here, the demand is grounded on a final judgment, the debtor cannot raise a “genuine dispute” to set aside a statutory demand while the judgment stands. In the Australian case of *Chapel of Angels Pty Ltd v Hennessy* [2021] FCA 875, Derrington J held:

“In the course of submissions, Mr Ohlson acknowledged that the essence of the plaintiff’s case was that the decisions of the District Court and the Queensland Court of Appeal were in error. Such arguments are not available and it is apparent that the applications are misguided in this respect. For this reason, any claim that there exists a genuine dispute in relation to the judgment debts on which the statutory demands are based must fail.

“.....It is well established that in order to establish a “genuine dispute” it must be shown that a bona fide dispute in fact exists, as opposed to one which is merely alleged on spurious, hypothetical or misconceived grounds: *Spencer Constructions Pty Ltd v G & M Aldridge Pty Ltd* (1997) 76 FCR 452 (*Spencer Constructions*) at 464. Here, the defendant in each action submitted that, as the statutory demands are founded upon judgment debts, there was no scope for the plaintiff to raise any dispute as to their existence. That submission should be accepted.”

17. Applying these principles, the Applicant’s grounds do not disclose a genuine dispute. They simply reassert the very contentions rejected by the ELC on 11 May 2023. To permit the insolvency court to revisit those issues would be to invite a collateral appeal to a court of coordinate jurisdiction, an outcome antithetical to finality and to the limited supervisory function intended by Regulation 17(6).
18. The appropriate forum to challenge a judgment is through appeal or a recognized review pathway, not via a statutory-demand application.
19. In reaching this conclusion, I am guided too by the policy articulated in *Universal Hardware Limited v African Safari Club Limited Civil Appeal 209 of 2007*[2013]eKLR, namely that insolvency machinery must not be used as a device to coerce payment of a debt that is genuinely and substantially disputed;



but, equally, where the dispute is not bona fide or is devoid of substance, the insolvency process should proceed.

20. In the present case, since the debt is already conclusively adjudicated, the Applicant cannot transmute a resolved liability into a “dispute” for the purpose of Regulation 17(6)(b).
21. In any event, I note that Section 384 also recognizes inability to pay where execution is returned unsatisfied, a circumstance often proximate to the issuance of a statutory demand on a judgment debt; but given my conclusions on finality and Regulation 17(6), it is unnecessary to traverse further evidential detail on this limb.
22. In the result, the Court finds that the Applicant has not brought itself within any of the four gateways in Regulation 17(6). The application is therefore devoid of merit and an abuse of the insolvency process, which is designed to enforce, not impeach, final judgments.
23. Accordingly, the Court issues the following final orders:
 - i. The Debtor/Applicant’s Notice of Motion dated 8 January 2024 is hereby dismissed in its entirety.
 - ii. The Statutory Demand dated 7 December 2023 issued by the Creditors/Respondents is hereby upheld.
 - iii. The Debtor/Applicant shall bear the full costs of this application, which is hereby assessed at Kshs. 100,000/-
 - iv. The matter is hereby marked as concluded, and the file closed.
24. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH JANUARY 2026.

HON. JUSTICE MOSES ADO

JUDGE

