REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

INSOLVENCY CAUSE NO. E003 OF 2025

IN THE MATTER OFTHE INSOLVENCY ACT, NO. 18 OF 2015

AND

IN THE MATTER OFAN APPLICATION FOR INSOLVENCY ORDERS AGAINST KEROCHE BREWERIES LIMITED UNDER SECTION 425 OF THE INSOLVENCY ACT

AND

IN THE MATTER OF INSOLVENCY REGULATIONS, 2016

AND

IN THE MATTER OF SATISFACTION OF A MONEY DECREE AGAINST KEROCHE BREWERIES LIMITED ARISING FROM NAKURU ELRC CAUSE NO.35 OF 2019: SAM KRUS SHOLLEI VS KEROCHE BREWERIES LIMITED

BETWEEN

SAM KRUS SHOLLEI.....PETITIONER

AND

KEROCHE BREWERIES LIMITED..... RESPONDENT

RULING

1. The Application before me is a Notice of Motion dated 27th August 2025 filed pursuant to Under **Sections 384, 423, 424, 425, 427** of the Insolvency Act, 2015; Regulations 15(6), 16, 77B of the Insolvency Regulations; **Article 159** of the Constitution craving for the following nine (9) reliefs;

    a) **SPENT**

    b) **SPENT**

    c) **SPENT**

    d) **There be a permanent injunction restraining the defendants and each of them by themselves, their servants, agents, employees or otherwise howsoever from further printing, publishing or distributing or causing to be written, published and distributed any of the liquidation petition or any related notices material or such material as would be scandalous or cause reputational damage to the Applicant/Respondent in any form or manner whatsoever;**

    e) **The Liquidation Petition dated 23rd May 2025 be struck-out with costs for being premised on an illegal and invalid Statutory Demand.**

    f) **A declaration be issued that the Statutory Demand dated 30th June 2025, the Liquidation Petition dated 23rd May 2025, and the advertisement notice dated 21st August 2025 are invalid, null, and void ab initio due to the illegal and defective nature of the Statutory Demand.**

g) **The Petitioner be ordered to issue a public apology to the Applicant in the same manner and prominence as the notice was published, retracting the insolvency allegations.**
h) **The Petitioner be ordered to pay reputational damages in the sum of Kenya Shillings Ten Billion Kenya Shillings (KShs. 10,000,000,000) for the reputational harm caused by the premature and abusive advertisement.**
i) **The Petitioner be ordered to pay general damages on the footing of exemplary and aggravated damages for the malicious conduct and harm caused by the premature and abusive advertisement.**
j) **Damages in lieu of apology;**
k) **Costs of this application be provided for.**
l) **Interest on (8), (9), (10) and (11) above at such rates and for such period as this Court may deem appropriate.**

2. The Applicants case is that;

a) **That, the Respondent/Applicant is a major employer in Kenya's brewing sector, with over 500 direct employees and thousands in its supply chain, contributing billions in taxes and exports, making any insolvency threat a potential economic disaster warranting urgent judicial intervention.**
b) **That, on 23rd May 2025, the Petitioner filed a Liquidation Petition premised on an alleged unsatisfied decree from**

Nakuru ELRC Cause No. 35 of 2019, claiming KShs. 75,000,000, but the accompanying Statutory Demand dated 30th June 2025 is fundamentally illegal and invalid.

c) **That, the Statutory Demand was signed by the Deputy Registrar of the High Court at Nakuru, not by the Petitioner or his authorized agent, directly contravening Section 384(1)(a) of the Insolvency Act, 2015, which requires signing by the creditor or authorized person.**

d) **That, a statutory demand must be dated and be signed by the creditor himself or by a person authorized to make the demand on the creditor's behalf.**

e) **That, the illegality of the Statutory Demand invalidates the entire Petition, as liquidation proceedings cannot be founded on a defective document, and proceeding otherwise would perpetuate an abuse of Court process.**

f) **That, due to this illegality, the advertisement of the Petition Notice on 21st August 2025 in the Kenya Gazette is wrongful and unauthorized, as it stems from an invalid foundation, causing undue prejudice to the Applicant.**

g) **That, the advertisement, based on an illegal Statutory Demand, exacerbates reputational harm by falsely signaling insolvency, which is not right and must be halted to prevent further catastrophe.**

h) **That, the Applicant denies insolvency, asserting solvency with ongoing operations, and the debt is disputed via a pending appeal proceedings in COACAPPL No. E020 of**

2023, raising arguable grounds against the ELRC judgment.

i) **That, the Petition ignores the active appellate process, using insolvency coercively, as condemned in Courts as being "coercive debt recovery."**

j) **That, the Petitioner's recent withdrawal of a contempt application dated 30th March 2024 in the same underlying matter (Nakuru ELRC Cause No. 35 of 2019), filed on 4th August 2025 without pursuing it to conclusion and with no orders as to costs, demonstrates a clear pattern of malicious and abusive litigation tactics aimed at harassing the Applicant, further evidencing that the insolvency Petition is not brought in good faith but as a tool for undue pressure and coercion.**

k) **That, Regulation 77B of the Insolvency (Amendment) Regulations, 2018, does not mandate pre-hearing advertisement, and its omission protects companies from premature harm, making this publicity abusive.**

l) **That, the advertisement causes irreparable commercial damage, including loss of supplier confidence, credit facilities, and market share, potentially leading to operational shutdown for this large entity.**

m) **That, the advertisement by the Petitioner amplifies the risk of national economic ripple effects.**

n) **That, the Court should grant an injunction against such publicity to stop further dissemination.**

o) That, allowing advertisement on an illegal basis violates Article 159(2)(d) of the Constitution, prioritizing technicalities over substantive justice, and urgent orders are needed to restore fairness.

3. The Application is opposed by the Petitioners Replying Affidavit dated16th September 2025 contending;

a) That the Application is frivolous, vexatious, dishonest and a blatant abuse of this Honorable Court's process, designed to derail and frustrate the just conclusion of these insolvency proceedings.

b) That the Respondent's attack on the Statutory Demand is utterly misconceived and grounded on a deliberate misreading of the law.

c) That Section 384[lj[a) of the Insolvency Act defines when a company is deemed unable to pay its debts namely, where a creditor has served a written demand of not less than Kshs. 100,000 and the company fails to pay within 21 days.

d) That Section 384(l)(a) sets out the principle, but does not prescribe the form of such a demand. The procedure and form are provided for under Regulation 77B of the Insolvency Regulations.

e) That the said advocates further advise me, which advice 1 verily believe to be sound, that Regulation 77B of the Insolvency Regulations expressly mandates that a liquidation petition be accompanied by a statutory demand in Form 32E.

f) That Form 32E, which he duly used, is prescribed by law and specifically provides that the demand is to be issued "By the

Court. Registrar." The Respondent's claim that the demand should have been signed by himself or his Advocates is a shameless distortion of the provisions of law. (exhibiting a copy of Form 32E)

g) *That compliance with subsidiary legislation made under the Insolvency Act has the full force of law.*

h) *Once the prescribed form has been adopted, the statutory requirement is satisfied, and the Respondent's argument collapses.*

i) *That the said advocates further advise him, which advice he verily believes to be sound, that the Respondent cannot purport to rewrite Form 32E, which is the lawful and standard form used in insolvency petitions throughout this Republic. Their objection is nothing but a desperate technicality meant to waste this Court's time.*

j) *That it is therefore false and misleading for the Respondent to allege that the statutory demand is defective; to the contrary, it is precisely in the form prescribed by law, and no defect arises.*

k) *That the said advocates further advise me, which advice I verily believe to be sound, that under Section 424(l)(e) of the Insolvency Act, 2015, a company may be liquidated by the Court if it is unable to pay its debts. The Respondent's continued failure to satisfy the judgment debt in Nakuru ELRC Cause No. 35 of 2019, despite repeated demands and the absence of any subsisting stay of execution, squarely places it within the circumstances contemplated by Section 424(l)[e).*

l) That he is therefore firmly within his rights as a decree-holder and creditor, to petition for its liquidation.

m) That the Respondent has deliberately misled this Honourable Court by alleging that there is a pending Court of Appeal matter - COACAPPL No. E020 of 2023 (Keroche Breweries Limited vs Sam Krus Shollei).

n) That the truth is that their application was dismissed over 2 years ago, with costs. (exhibiting a copy of the Order of the Court of Appeal dated 19th June 2023)

o) That only after these insolvency proceedings were commenced did they attempt, at the eleventh hour, to "revive" their dismissed application. Such afterthoughts cannot retrospectively invalidate his petition.

p) That in any event, the Respondent's application for restoration is itself hopeless, incompetent, and doomed to fail, being a desperate last throw of the dice after years of failed attempts. It is merely a cosmetic filing calculated to create the illusion of a "pending appeal" where none truly exists. (exhibiting a copy of the Applicant's application dated 2nd July 2025 and his Replying Affidavit dated 8th August 2025)

q) That the Respondent has been filing application after application, each being dismissed in turn. Their litigation history is one of repeated failure, delay, and dishonesty. (exhibiting copies of Rulings dated 30th May 2025)

r) That the Respondent's non-disclosure of the dismissal of their prior application(s) amounts to fraud on the Court, bad faith, and

deliberate abuse of process. This is not the conduct of a party seeking justice but of a party clinging to its "ninth life".

s) *That in any event, unless there is an express stay of execution, which there is none, an appeal does not operate as a stay. The decree from Nakuru ELRC Cause No. 35 of 2019 remains valid and enforceable.*

t) *That each filing by Keroche, this being their latest, is not to vindicate rights but to wear down, delay, and frustrate me as a lawful decree-holder and therefore this Court should not indulge such blatant abuse of judicial resources.*

u) *That the Respondent portrays itself as a major taxpayer and employer, but such economic size does not immunize it from compliance with Court decrees.*

v) *That public interest is better served by upholding the rule of law - ensuring that no company, however large or politically connected, can defy Court judgments with impunity.*

w) *That, the Respondent's alleged solvency is unproven and irrelevant. The fact remains that it has failed to settle a lawful judgment for nearly three years and is now using the Court once again as a shield against execution, thereby prejudicing his right to enjoy the fruits of judgment.*

x) *That he is informed by his Advocates on record, which information he believes to be true, that the law allows for the Respondent to be liquidated by the Court if it is unable to pay what it owes*

y) *That the Respondent's feigned concern about reputation is self-inflicted, arising from its endless defaults and disregard for lawful Court orders. The attempt to claim an outrageous sum of Kshs. 10*

billion in "reputational damages" is not only speculative but also insulting to the integrity of this Honourable Court.

z) That insolvency proceedings are by their very nature matters of public record, and the law itself requires advertisement of petitions. A debtor cannot transform lawful procedure into a tortious wrong.

aa) That the Respondent's prayer for a public apology is frivolous, scandalous, and wholly misconceived in law. Insolvency proceedings are a statutory mechanism for debt enforcement, not defamation claims.

bb) That, the Respondent cannot seek to intimidate him, as a decree-holder, by demanding apologies for the lawful exercise of his statutory rights.

cc) That the Respondent's fears of liquidation and job losses are irrelevant and exaggerated. The only party facing real and demonstrable prejudice is himself, having waited since 2019 for justice.

dd) That the Respondent's application dated 27th August 2025 is an application brought in bad faith, devoid of merit, and ought to be dismissed with costs

Applicants Submissions

4. That its Application is grounded on the invalidity of the statutory demand dated 30th June 2025, the premature and abusive advertisement of the petition in the Kenya Gazette Notice No. 10562 dated 21st August 2025, and the consequent severe damages inflicted upon the Applicant as a solvent, major Kenyan enterprise.

5. That, they shall demonstrate in submissions, that the Petitioner's actions constitute a malicious abuse of the insolvency process, aimed at coercing payment of a disputed decree rather than pursuing genuine insolvency remedies, and that the Applicant is entitled to the full spectrum of reliefs sought, including substantial damages to compensate for the irreparable harm caused.

6. That they have carefully reviewed the Petitioner's Replying Affidavit sworn by **Sam Krus Shollei** on 27th August 2025 and his Written Submissions dated 8th October 2025, and shall demonstrate the genesis of this dispute lies in Nakuru ELRC Cause No. 35 of 2019, where the Petitioner obtained a decree against the Applicant for KShs. 75,000,000, which the Applicant has contested through appellate processes, including COACAPPL No. E020 of 2023, currently pending restoration after a procedural dismissal.

7. That, despite the disputed nature of the debt and the absence of a final, uncontested determination, the Petitioner issued a statutory demand on 30th June 2025, signed not by himself or an authorized agent but by the Deputy Registrar of the High Court at Nakuru, in clear violation **of Section 384(1)(a)** of the Insolvency Act, 2015.

8. Premised on this defective demand, the Petitioner filed the liquidation petition on 23rd May 2025 and proceeded to advertise it prematurely in the Kenya Gazette on 21st August 2025, without awaiting judicial determination on its validity, thereby triggering widespread commercial panic and harm to the Applicant.

9. That the Applicant, as detailed in the Further Affidavit, is a solvent entity with assets exceeding KShs. 18 billion, annual turnover of over KShs. 8 billion, employing over 520 permanent staff and supporting thousands in its supply chain, making it a vital contributor to Kenya's economy.

10. That advertisement has caused immediate and ongoing damages, including withdrawal of credit facilities, restricted banking access, reduced sales volumes, employee unrest, loss of investor confidence, and reputational erosion valued conservatively at KShs. 10 billion, as evidenced by annexed documents and expert valuations.

11. In response, the Petitioner, through his Replying Affidavit and Submissions, attempts to defend the demand's validity by misinterpreting Form 32E and Regulation 77B, while dismissing the Applicant's appellate efforts as "hopeless" and accusing the Applicant of abuse of process, claims they shall dismantle herein.

12. That the background above underscores the Petitioner's coercive tactics, condemned by Kenyan Courts as improper use of insolvency proceedings for debt recovery, and justifies the Applicant's pursuit of damages to restore its position.

13. The Applicant refines four issues for considerations;

    a) **Whether the statutory demand dated 30th June 2025 is valid and compliant with Section 384(1)(a) of the**

Insolvency Act, 2015, or whether it is fundamentally defective and renders the entire petition incompetent?

b) Whether the advertisement of the liquidation petition in the Kenya Gazette on 21st August 2025 was premature, unlawful, and abusive, warranting an injunction and striking out of the petition?

c) Whether the Petitioner's actions constitute a malicious abuse of the insolvency process, entitling the Applicant to general, aggravated, and exemplary damages?

d) **Whether the Applicant has suffered quantifiable reputational and financial damages as a direct result of the Petitioner's actions, justifying an award of KShs. 10,000,000,000 in reputational damages, plus other heads of damages and costs on a higher scale?**

As to whether the statutory demand dated 30th June 2025 is valid and compliant with Section 384(1)(a) of the Insolvency Act, 2015, or whether it is fundamentally defective and renders the entire petition incompetent?

14. That the validity of the statutory demand, we submit that **Section 384(1)(a)** of the Insolvency Act, 2015, explicitly requires that a statutory demand be "dated and signed by the creditor himself or by a person authorized to make the demand on the creditor's behalf," a safeguard designed to ensure personal accountability and prevent frivolous or unauthorized demands.

15. That the Petitioner's demand, annexed as "SKS-1" in his Replying Affidavit, was signed solely by the Deputy Registrar, without any indication of the Petitioner's personal signature or explicit authorization, rendering it non-compliant and invalid *ab initio*.

16. That the Petitioner's claims and places reliance on Form 32E cures all defects, we assert that Form 32E is merely a template under the Insolvency Regulations, 2016, and does not override the substantive requirement in the parent Act for the creditor's direct involvement.

17. That the Petitioner's misreading of Regulation 77B, which mandates accompaniment by a statutory demand in Form 32E, ignores that the form must still satisfy the Act's signing mandate; compliance with subsidiary legislation cannot validate a demand that flouts the primary statute.

18. Furthermore, the Petitioner's accusation that the Applicant's objection is a "shameless distortion" is baseless; Kenyan jurisprudence, emphasizes that statutory demands must strictly adhere to the creditor's personal authorization to avoid abuse.

19. That, the defect is not a mere technicality but a fundamental flaw that vitiates the demand, as it deprives the Applicant of the statutory protection against unauthorized insolvency threats, and thus the petition founded thereon must be struck out with costs.

20. The Court’s attention is drawn to the recent and binding authority of **Zan Steel Limited v Jumbo Steel Mills Limited (Insolvency Notice E105**

of 2021) [2022] KEHC 14655 (KLR) (28 October 2022) where E.C. Mwita, J. exhaustively considered the very question now before this Court: whether a statutory demand signed only by the Deputy Registrar (and not by the creditor or a person expressly authorized by the creditor) complies with Section 384(1)(a) of the Insolvency Act.

21. In Zan Steel, the learned Judge cited with approval In **Re F.M. Macharia (K) Ltd [2017] eKLR** and **Blueline Properties Limited v Mayfair Insurance Company Ltd [2019] eKLR** and held that;

> ***"the requirement that the demand be "dated and signed by the creditor himself or by a person authorized to make the demand on the creditor's behalf" is a mandatory substantive safeguard. A demand signed only by the Deputy Registrar was declared incompetent and set aside"***

22. That the Petitioner's reliance on Form 32E and the words "By the Court, Registrar" was expressly rejected in Zan Steel as being incapable of curing the substantive defect in signing. The Court held that the form is merely procedural scaffolding; it cannot override the clear wording of the parent Act. This decision is on all fours with the present case and is binding on this Court.

23. Accordingly, the statutory demand dated 30th June 2025, signed only by the Deputy Registrar of the High Court at Nakuru and containing no evidence of personal authorization from **Sam Krus Shollei**, is null,

void and of no legal effect. The entire liquidation petition, being founded on this incompetent document, must fall with it.

As to whether the advertisement of the liquidation petition in the Kenya Gazette on 21st August 2025 was premature, unlawful, and abusive, warranting an injunction and striking out of the petition?

24. That the prematurity and unlawfulness of the advertisement, Regulation 77B of the Insolvency (Amendment) Regulations, 2018, does not mandate pre-hearing advertisement, and its omission is intentional to shield solvent companies from premature harm, as articulated in the Applicant's Application.

25. That, the Petitioner advertised the petition on 21st August 2025, despite the disputed debt and pending appellate proceedings, falsely signaling insolvency and causing irreparable damage, in direct contravention of **Article 159(2)(d)** of the Constitution, which prioritizes substantive justice over procedural technicalities.

26. That advertising a petition based on a defective demand exacerbates the abuse, as it amplifies unfounded insolvency perceptions without judicial scrutiny.

27. That, the advertisement led to immediate withdrawal of supplier credit terms from 30-90 days to cash basis, straining liquidity and increasing outflows, harms that were foreseeable and maliciously inflicted.

28. The Applicant urges the Court to grant the injunction sought to halt further dissemination and preserve the Applicant's operations. Such premature advertisements should be curtailed in order to prevent economic catastrophe.

29. That the advertisement's abusive nature is evident from its timing, coinciding with the Applicant's sensitive negotiations with investors and export partners, as detailed in the Further Affidavit, designed to coerce settlement rather than pursue legitimate remedies.

As to whether the Petitioner's actions constitute a malicious abuse of the insolvency process, entitling the Applicant to general, aggravated, and exemplary damages?

30. That, malicious abuse of process, the Petitioner's conduct, including filing the petition amid a disputed debt and without a subsisting stay of execution, aligns with judicial condemnation of insolvency as a "coercive debt recovery" tool, as per **In Re: Steel Africa Limited [2017] eKLR.**

31. That the Petitioner's Replying Affidavit at paragraphs falsely portrays the Applicant's appellate efforts as "hopeless" and "abusive," yet COACAPPL No. E020 of 2023 was dismissed procedurally on 19th June 2023, and the Applicant's restoration application dated 2nd July 2025 raises arguable grounds, including non-service and excusable delay.

32. That the Petitioner's own withdrawal of a contempt application on 4th August 2025 in the underlying ELRC matter, without pursuing costs, evidences his pattern of harassing litigation, as highlighted in the Certificate of Urgency at paragraph 11, aimed at undue pressure.

33. That the Applicant's solvency, with no other creditors petitioning and ongoing operations, belies any genuine belief in insolvency; the Petitioner's actions are thus malicious, warranting aggravated damages for calculated harm and exemplary damages to deter similar abuses, as prayed. Insolvency proceedings should not be weaponized as the Petitioner has done in this case.

34. As to whether the Applicant has suffered quantifiable reputational and financial damages as a direct result of the Petitioner's actions, justifying an award of KShs. 10,000,000,000 in reputational damages, plus other heads of damages and costs on a higher scale?

35. That the Further Affidavit quantifies special damages from heightened financing costs, professional fees, and eroded terms, rising with prolonged instability, directly flowing from the advertisement.

36. That the reputational damages of KShs. 10 billion are conservatively estimated based on pre-incident brand equity of over KShs. 12 billion.

37. That the Applicant’s has suffered substantial harm, including lost investor negotiations and suspended export orders from Uganda and Tanzania.

38. That Employee unrest, with over 150 staff expressing job security concerns, necessitates KShs. 500 million in recruitment and training, a direct cost attributable to the false insolvency narrative amplified by media coverage post-advertisement.

39. That General damages are warranted for incalculable injury to commercial reputation, given the Applicant's high-profile status as Kenya's largest indigenous brewery, where perceptions of distress lead to long-term market erosion.

40. That the Petitioner's claim that the Applicant is "clinging to its ninth life" ignores the Applicant's contributions to national employment and taxes, underscoring the disproportionate harm and justifying exemplary damages to uphold insolvency law integrity.

41. That in totality, the damages claimed are not exaggerated but reflective of the Applicant's scale.

42. That the Petitioner's non-disclosure of the demand's defects in his petition amounts to fraud on the Court, further aggravating damages, as it misled stakeholders into believing the insolvency threat was legitimate.

43. Moreover, the advertisement triggered former employees to withdraw instalment agreements, demanding full settlement, as per the Further Affidavit at paragraph 15, escalating disputes and costs unnecessarily.

44. That the Petitioner's assertion that the Applicant misled the Court on the appeal; the restoration application is *bona fide*, and pending appeals do not bar challenges to abusive petitions.

45. That the Applicant's prayer for costs on a higher scale is justified by the Petitioner's vexatious conduct, wasting judicial resources and inflicting undue burden, as per **Section 27** of the Civil Procedure Act.

46. That the Applicant's evidence is unchallenged by specifics from the Petitioner, who relies on general denials; equity demands full compensation to restore the *status quo ante.*

47. That Synthesizing all issues, the petition must be struck out as incompetent, the advertisement enjoined, and damages awarded to vindicate the Applicant's rights against this egregious abuse.

48. The Applicant prays that the application be allowed in its entirety, with the Petitioner bearing costs, to affirm the sanctity of insolvency proceedings as protective, not destructive, mechanisms.

Respondents Case

49. That the application dated 27th August 2025 is a classic example of abuse of the Court process. It seeks to invalidate a lawful insolvency petition through misrepresentation, technical sophistry, and deliberate concealment of material facts.

50. That the Respondent is a decree-holder under Nakuru ELRC Cause No. 35 of 2019, where judgment was entered in his favour for over Kshs.

45,550,051, a decree that has remained unsatisfied for more than three years.

51. That the Applicant is now clutching on straws to have the statutory notice struck-off.

52. The Respondent refines the following issues for determination before this Honorable Court:

i) Whether the Respondent's application it time-barred under Regulation 16 of the Insolvency Regulations;

ii) Whether there is an unsatisfied decree in favor of the Petitioner against the Respondent;

iii) Whether the service of a statutory demand is a mandatory prerequisite where a liquidation petition is founded on an unsatisfied decree;

iv) Whether the statutory demand accompanying the Petition is defective; and

v) Whether the Respondent is entitled to damages.

As to Competency of the Respondent's Application

53. The Respondent contends that the Applicant brought the present application based on Regulations 15 and 16 of the Insolvency Regulations. Even though the said regulation is under PART V, Courts have repeatedly held that the said regulations are applicable to liquidations or insolvencies of companies. (**Libyan Arab African**

Investments Company Kenya Limited – 2021 eKLR and Bell Estate Agency Limited v Sifa Towers Management Ltd).

54. **Regulation 16(1)** of the Insolvency Regulations, 2016 provides that:

> **"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 first appearance."**

55. That the above provision is couched in mandatory terms and forms part of the self-contained statutory code governing the insolvency process. A debtor who fails to act within the stipulated twenty-one days loses the right to challenge the statutory demand.

56. The record is clear that the statutory demand herein was served upon the Respondent on 18th July 2025.

57. That the Applicant filed the present application on 11th September 2025, a full fifty-five (55) days after service. The twenty-one-day period prescribed under Regulation 16 expired on or about 8th August 2025.

58. That, no application for extension of time or for leave to file out of time has ever been made.

59. The Respondent's challenge to the statutory demand therefore offends Regulation 16(1) and is time-barred.

60. That once the twenty-one days lapse without a valid application, the statutory demand becomes final and binding and the company is deemed unable to pay its debts within the meaning of **Section 384(1)(a)** of the Insolvency Act.

61. That a debtor cannot resurrect an expired right by disguising a late challenge as an application to strike out the petition or by raising objections in reply. Such an approach would defeat the purpose of the strict timeline and undermine the certainty intended by the Insolvency framework.

62. That the Application having been filed well outside the statutory twenty-one-day window is fatally defective, incompetent, and devoid of jurisdictional foundation.

63. That the statutory demand therefore stands unchallenged and crystallized by operation of law, rendering the Respondent unable to pay its debts. The entire application should on this ground alone, be dismissed with costs.

As to whether there is an unsatisfied decree in favor of the Petitioner against the Respondent?

64. That it is not in dispute that in Nakuru ELRC Cause No. 35 of 2019, judgment was entered in favour of the Petitioner, against the Respondent, for the sum of Kshs. 45,550,051 together with costs and the same continues to accrue interest.

65. That a formal decree was duly extracted and served upon the Respondent. To date, no appeal, stay of execution, or review has been granted to set aside or vary that judgment. The decree therefore remains valid, final, and binding.

66. Despite repeated demands and opportunities to settle, the Respondent has refused, neglected, and failed to honour the decree. The debt remains wholly unpaid.

67. The Applicant's persistent non-payment despite service of a statutory demand conclusively demonstrates that it is insolvent.

68. That, there is no *bona fide* dispute as to the debt owed to the Petitioner. The Applicant's various applications have never disputed the existence of the judgment debt. Instead, they have relied on technical objections and procedural maneuvers to stall payment, all of which have been dismissed with costs as has been vividly deposed by the Petitioner in his Replying Affidavit.

69. Reference is made to the case of **Pasaiba Tourmaline Limited (Insolvency Petition E031 of 2023) (2024) KEHC 5351 (KLR),** the Court ruled as follows;

> ***"I disagree with the submission made by the applicant that a creditor should pursue insolvency as a last option for executing a decree obtained from a judgment. On the contrary, I am of the view that insolvency proceedings can be initiated without first attempting other forms of***

execution provided that the prerequisites for insolvency are duly met. With a judgment at hand, and an unsatisfied decree, this Court is of the view that the respondent was justified in instituting the insolvency proceedings."

70. That the Court should therefore find that there exists an unsatisfied decree in favour of the Petitioner, and that the Respondent falls within the insolvency threshold set under **Sections 384** and **424** of the Insolvency Act.

As to whether the service of a statutory demand is a mandatory prerequisite where a liquidation petition is founded on an unsatisfied decree?

71. That, it is the Applicant's argument, that the present petition is fatally defective for want of a valid statutory demand. The question for determination, therefore, is whether service of a statutory demand is a mandatory statutory precondition for a liquidation petition that is based on an unsatisfied Court decree.

72. That, **Section 384(1)** of the Insolvency Act sets out the circumstances in which a company is deemed unable to pay its debts. It provides, inter alia, that a company is unable to pay its debts—

a) if a creditor … to whom the company is indebted for one hundred thousand shillings or more has served … a written demand requiring the company to pay the debt and the company has for twenty-one days failed to pay or secure it; or

b) if execution or other process issued on a decree or order of any Court in favour of a creditor … is returned unsatisfied in whole or in part.

73. That it is therefore clear that, sub-section (a) applies to ordinary debts requiring a written demand, while sub-section (b) applies to judgment debts or unsatisfied decrees, which are already unconditional Court-ordered demands for payment.

74. That the above interpretation was authoritatively confirmed in **Kinuthia v Xplico Insurance Company Limited (Insolvency Petition E051 of 2022) [2023] KEHC 23704 (KLR)**, where the Court held that the service of the statutory demand and filing the same with the liquidation petition was not a mandatory requirement in all cases where the liquidation petition was grounded on inability to pay debts. The Court held that where a petitioner's case fell within **Section 384(1)(b)** of the Insolvency Act as it was based on the failure by the respondent to settle a decree issued by the Court, it was unnecessary to issue a statutory demand.

75. That the Court reasoned that, a decree itself constitutes an unconditional demand by the Court, and therefore, where a company fails to honour it after execution attempts have failed, no further written demand is required.

76. That this interpretation accords with both logic and justice: a judgment debtor already knows, by virtue of the decree, that it is obligated to pay a definite sum. To demand an additional notice would elevate form over substance and reward deliberate noncompliance with Court orders.

77. That the present petition is squarely founded on a valid and unsatisfied decree issued in Nakuru ELRC Cause No. 35 of 2019, in which judgment was entered for the Petitioner for Kshs. 45,550,051 plus costs and interest.

78. That the Applicant has failed and refused to satisfy that decree for over three years despite repeated demands and even after execution attempts proved futile and consequently, this petition properly falls under **Section 384(1)(b)** of the Insolvency Act. The requirement for a statutory demand is therefore inapplicable.
79. That the Respondent went beyond what the law requires by serving a statutory demand dated 18th July 2025—a step taken out of prudence, not obligation. Even if there were any technical irregularity in that demand, the petition would still stand independently under **Section 384(1)(b).**

80. That to insist on the necessity of a statutory demand in such circumstances would defeat the intent of the Act and frustrate decree-holders seeking to enforce lawful judgments. The Insolvency Act is a remedial statute, and Courts must interpret it purposively to uphold the integrity of decrees and the authority of judicial orders.

81. That it is therefore the submission of the Petitioner that the service of a statutory demand is not a mandatory prerequisite for liquidation petitions grounded on unsatisfied decrees. A decree is itself a lawful, unconditional demand by the Court.

As to whether the Statutory Demand is defective?

82. That the Applicant argues, as has been unsuccessfully argued in other matters, that a statutory demand issued under **Regulation 77B** of the Insolvency Regulations is invalid unless it bears the signature of the creditor, and not merely the Deputy Registrar's.

83. That interpretation is legally untenable and inconsistent with the plain language of both the Insolvency Act and the Insolvency Regulations, 2016. 36. A statutory demand which sets out the substance of a creditor's claim and is duly served on the debtor satisfies the purpose of the law. The statutory demand served upon the Respondent was clear, valid, and effective under the Insolvency Regulations.

84. That this position is further buttressed by the decision of Mugambi J in **Bell Estate Agency Limited v Sifa Towers Management Ltd** where he ruled as follows:

> ***"…The Statutory Demand which was served on the applicant was not endorsed. I therefore find and hold that failure to endorse the statutory demand by the Deputy Registrar does not invalidate the demand issued by the petitioner. Be that as it may, it is now settled that non-compliance with the form of the statutory demand is not fatal as long as there was substantial compliance with the requirements of the law. (see for instance Re: Kipsigis Stores Limited, ML HC INC No. 14 of 2016 and Re: Sucasa at Mombasa Road ML HC INC No. 9 of 2018, [2019] eKLR. I associate myself with this position and I find and hold that the Statutory Demand sets out the substance of the***

respondents' claims by against the Company. It is substantially in Form 32E and sets out the material details as required."

85. And in **Jabavu Village Limited v Credit Bank Plc (Insolvency Notice E179 of 2022) (2023) KEHC 25142 (KLR),** the Court opined as follows at paragraphs 11-13:

"I have carefully studied the statutory demand dated 1st December 2022. While the same is not signed, it does state the amount of the debt, the timelines for compliance, and it does contain a notice of liquidation if the debt is not paid and finally the methods of compliance open to the Company. Moreover, it is now settled that non-compliance with the form of the statutory demand is not fatal as long as there was substantial compliance with the requirements of the law. (see for instance Re: Kipsigis Stores Limited ML HC INC No. 14 of 2016 and Re: Sucasa at Mombasa Road ML HC INC No. 9 of 2018 [2019] eKLR and Re: F. M. Macharia (K) Limited [2017] eKLR. I associate myself with this position…I find that the statutory demand issued by the respondent dated 1st December 2022 substantially complies with the Form 32E and it sets out all the ingredients of a statutory demand as required by section 384(1)(a) of the Act."

86. Accordingly, the Applicant's anticipated objections on the alleged lack of signature or endorsement are without merit.

87. **Regulation 77B (2)** expressly provides that a liquidation petition shall be accompanied by "a statutory demand in Form 32E." It does not say "a demand signed by the creditor." The prescribed Form 32E, as published in the Regulations, contains a signature line reading "By the Court, Registrar." The Legislature's intention is therefore unmistakable: the demand is issued under the authority of the Court, not as a private document of the creditor.

88. Reference is made to the case of **Majestic Printing Works Limited (Insolvency Petition E010 of 2020) (2022) KEHC 16490 (KLR),** one of the issues that arose for determination was whether the statutory demand conformed to the prescribed format. The Court ruled thus:

> ***"The format of a statutory demand is provided for under regulation 77B of the Insolvency Regulations, 2016 (as amended by the Insolvency (Amendment) Regulations, 2018) thus: … Having looked at the form 32E (Per Legal Notice no 7 of 2018), I am satisfied that the statutory demand dated November 24, 2020 as issued by the petitioner was indeed compliant with the provisions of the applicable law….In the result, I am satisfied that the statutory demand issued by the petitioner was not only in compliance with the prescribed form, form 32E, but also in obedience of the order of the Court…"***

89. That, to impose an additional requirement that the creditor must sign would amount to rewriting subsidiary legislation, contrary to settled

canons of statutory interpretation. The Court's role is to apply the law as enacted, not to supplement it.

90. Furthermore, **Section 384(1)(a)** merely defines when a company is unable to pay its debts; it does not dictate the form of the demand. The operative procedural provisions are found exclusively in the Regulations, and compliance with Form 32E satisfies the law in full.

91. That the Insolvency Act, being a remedial statute, should receive a purposive interpretation that furthers its objective not one that encourages technical avoidance by unruly debtors.

92. That even assuming argument that, the Registrar's signature was a mere endorsement, the Respondent suffered no prejudice whatsoever. They were duly served, understood the demand, knew they were indebted to the Petitioner, refused to pay the debt and had every opportunity under Regulation 16 to contest the demand within twenty-one (21) days. They chose not to.

93. That, Justice Mwita in **Kagwima Kang'ethe & Company Advocates vs Vishal Kochar (Insolvency Petition E033 of 2021)** held that 'if no injustice flows from the consequences of procedural non-compliance, then it would serve no purpose to dismiss a matter which otherwise complies with the law save the minor procedural infraction. I therefore find no merit in the debtor's argument that the petition is defective for no-compliance with regulations when no injustice is caused by such defect or omission'.

94. FINALLY, the Petitioner's position further finds firm support in the recent decision of W.A. Okwany in **Laico Regency Hotel – Nairobi v Burguret Farm Limited** (**Insolvency Notice E064 of 2020) (2022) KEHC 469 (KLR)** where the Judge ruled thus:

> "***I have perused at the Statutory Demand dated 23rd November 2020 and I note that it is substantially in form 32E as prescribed under Regulation 77B of the Insolvency Regulations. The demand sets out the substance of the respondents claim as against the applicant. My finding is that the mere fact that the Statutory Demand was signed by the Deputy Registrar does not make it defective." (emphasis added)***

95. The Respondent's challenge therefore collapses both on the law and on equity. To accept their argument would allow debtors to exploit a purely clerical issue to escape lawful debts, contrary to the very spirit of insolvency law.

96. The Petitioner submits that the statutory demand herein was properly issued in Form 32E, duly signed by the Deputy Registrar as required by law. The Respondent's expected argument that it should have been signed by the Petitioner is misconceived, unsupported, and contrary to the clear wording of the Regulations.

97. This Honourable Court is urged to follow the reasoning in **Paleah Stores Ltd and Kipsigis Stores Ltd** and decline to extend any

interpretation to the present matter. The Respondent's arguments should therefore be rejected in *limine.*

Issue 5 – Whether the Respondent is entitled to damages

98. The Respondent seeks an award of Kshs. 10,000,000,000 (ten billion shillings) in alleged reputational damages, claiming that the advertisement of this petition was premature, abusive, and injurious to its business reputation.
99. The claim is audacious, baseless, and legally misconceived. It constitutes a transparent attempt to intimidate the Petitioner and to weaponize civil process to shield a judgment debtor from lawful execution.

100. Furthermore, reputational injury is a claim sounding in tort and must be specifically pleaded and proved in a separate civil action. It cannot be raised by motion within insolvency proceedings hence a Court of law cannot expand its jurisdiction through judicial innovation.

101. The advertisement of an insolvency petition is not a discretionary act of the Petitioner; it is a statutory requirement designed to ensure transparency and to notify interested parties.

102. Insolvency proceedings are creatures of statute. The Insolvency Act and Regulations do not provide for awards of reputational damages in insolvency matters. To import such a remedy would amount to judicial legislation and a distortion of statutory jurisdiction.

103. A company that has remained in contempt of a valid judgment and evaded its obligations cannot turn around and blame lawful enforcement actions for reputational damage.

104. Therefore, the Respondent's demand for Kshs. 10,000,000,000 in "reputational damages" is wholly without legal foundation and falls outside the jurisdiction of this Honourable Court.

105. The Respondent's application is the latest in a long chain of meritless attempts to evade satisfaction of a valid decree. It offends both the letter and the spirit of the Insolvency Act.

106. The statutory demand was properly issued under **Regulation 77B** in Form 32E and duly endorsed by the Deputy Registrar in accordance with the law. The Respondent's belated challenge—filed fifty-five (55) days after service—is time-barred under Regulation 16(1) and therefore incompetent.

107. Even if the Court were to entertain the Respondent's arguments, they are anchored on a misreading of the law. Their reasoning and any reasoning for that matter, that may be presented before this Court, is not binding and should not be followed as such seeks to rewrite the Regulations by importing a requirement that the creditor personally signs the demand—something the law does not contemplate. The better reasoned authorities—**Re Paleah Stores Ltd [2021]** and **Re**

Kipsigis Stores Ltd [2017]—uphold that a demand signed by the Deputy Registrar fully complies with the prescribed form.

108. In any event, the petition is properly grounded on **Section 384(1)(b)** — an unsatisfied decree — and, as confirmed in **Kinuthia v Xplico Insurance Company Limited [2023] KEHC 23704 (KLR)**, a statutory demand is not a mandatory prerequisite in such cases. A decree is itself an unconditional judicial demand; no further written demand is necessary.
109. The Respondent's claim of reputational loss and demand for a public apology are legally unsustainable and constitute a transparent attempt to intimidate the Petitioner. Insolvency proceedings are public by statutory design; no liability can arise from compliance with the law. Advertisement of insolvency proceedings is a statutory act, not a tortious one.

110. The Respondent has demonstrated a pattern of procedural abuse, deliberate delay, and bad faith, repeatedly filing applications only to lose them with costs.

111. The Petitioner, a lawful decree-holder, has acted squarely within his rights under **Sections 384** and **424** of the Insolvency Act. The Respondent's continued refusal to honour a valid judgment debt leaves this Court with no option but to allow the insolvency process to proceed.

112. For the foregoing reasons, the Petitioner respectfully prays that this Honourable Court be pleased to—

i. Dismiss the Respondent's application dated 11th September 2025 with costs;

ii. Find and declare that there exists a valid, unsatisfied decree in favour of the Petitioner against the Respondent in Nakuru ELRC Cause No. 35 of 2019;

iii. Find that the statutory demand was properly issued and served in compliance with the Insolvency Act and Regulations;

iv. Alternatively, and without prejudice, find that the present petition remains properly before the Court under **Section 384(1)(b)** of the Insolvency Act even

v. in the absence of a statutory demand;

i. Strike-out the Respondent's prayer for Kshs. 10,000,000,000 in alleged reputational damages for being frivolous, speculative, scandalous, and beyond the jurisdiction of this Honourable Court;

ii. Order the insolvency petition to proceed to hearing and determination on its merits; and

iii. Award the Petitioner costs of this application and such further orders as the Court may deem fit, to secure the ends of justice and prevent further abuse of process.

Analysis & Determination

113. The Sole issue for determination is whether the petition is fatally defective for want of compliance with **Regulations 77B (2) b** of the

Regulations and whether the statutory notice is invalid for want of being signed by the Petitioner thereby invalidating the petition.

114. I am surprised at the manner in which the petitioner moved this Court, firstly a Statutory Demand pursuant to **Section 425** and **Regulation 77B** must be issued prior to filing of the petition and it is only upon failure and or refusal to pay that such a notice is then annexed to the petition to be filed. In this instance the petition was dated 23rd may 2025 while the Statutory Notice is dated 30th June 2025.

115. The Insolvency **Regulations No. 47** of 2016 Regulation 77B provides for Liquidation by Court (1) For the purposes of **Section 425** of the Act an application for liquidation shall be— (a) by way of a petition in Form 32C as set out in the First Schedule; and (b) accompanied by a verifying affidavit in Form 32D as set out in the First Schedule. (2) The petition for liquidation shall be accompanied by the following documents— (a) a statutory demand in Form 32E set out in the First Schedule if the reason for petition is indebtedness; and (b) a statement of financial position in Form 32 as set out in the First Schedule where necessary.

116. Furthermore **Regulation 16**. Provides for 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."

117. The Court observes that the Statutory Notice was never served thereby contravening **Section 425** of the Insolvency Act and Regulation 77B Insolvency Regulations.

118. The Applicant was entitled to notice to satisfy the judgment, failure of which it would trigger the subsequent filing of a petition. In this instance the petition was filed prior to issuance of a notice an incurable fatality.

119. This Court detests the “Sharp” practice apparent in this litigation noting that the current administration of justice has no place for, the Petitioner in his quest to steal a match, filed his petition without complying with the law, no statutory notice preceded the filing of the petition and the petition is without certification by the official receiver and no receipt for certification is annexed and he unilaterally and irregularly rushed to advertise the insolvency in the daily newspapers.

120. Insolvency Proceedings are regulated by adherence to strict procedure to ensure fairness and eliminate prejudice, the process is Court sanctioned, none of the Respondent/Petitioner’s actions were sanctioned by the Court, save for the Purported Statutory Notice Dated 30th June 2025 being endorsed after the petition had been filed.

121. While this Court disagrees with the Applicant that the statutory notice is invalid for not being signed by the Respondent, I do find that the Deputy registrar may endorse the same as it appears in the Form 32E which to this Court is not a strict requirement of the law and regulations. The failure of a creditor or a decree holder to sign the notice of an acknowledged debt or in this instance an acknowledged unsatisfied judgment/decree is not fatal and is curable by dint of **Section 696** of the Act which provides:

> **“696 (1) A proceeding under this Act may not be invalidated or set-aside for a defect in a step that is required to be taken as part of, or in connection with, the proceeding, unless a person is detrimentally affected by the defect.**

(2) The Court may order the defect to be corrected, and may order the proceeding to continue, on such terms as it considers appropriate in the interests of everyone who has an interest in the proceeding.

(3) In this section, "defect" includes a misdescription, misnomer or omission".

122. The legal basis for a statutory demand is to be found in **Section 384(1)(a)** of the Act which sets out the essential ingredients of a written demand. The provision states as follows:

> **"384. (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"**

123. This Court finds that a statutory demand made post-filing of the Petition and served with the filed Petition is a fatal nullity transcending into the petition itself.

124. The failure to seek certification by the official receiver fatally affects the petition to the extent that indebtedness or want of satisfaction of judgment debt, is not demonstrated.

125. The issuance of a public advertisement of the insolvency proceedings was without the sanction of the Court thus null and void.

126. With regard to the Applicants quest for damages libel, this Court declines the same for not being properly pleaded and want of trial the Applicant cannot canvass a tort claim within an interlocutory application and may consider filing a substantive suit.

127. With that said, I find that sufficient merit has been demonstrated to allow the same on the following terms;

   i. **A permanent injunction is hereby issued, restraining Sam Krus Shollei, his servants, agents, employees or otherwise howsoever from further printing, publishing or distributing or causing to be written, published and distributed any of the liquidation petition flowing from Nakuru ELRC Cause No. 35 of 2019, or any related notices material or such material as would be scandalous or cause reputational damage to Keroche Breweries Limited, in any form or manner whatsoever;**

   ii. **A Declaration is hereby issued that, the Statutory Demand dated 30th June 2025, the Liquidation Petition dated 23rd May 2025, and the advertisement notice dated 21st August 2025 are invalid, null, and void *ab initio.***

iii. **The Liquidation Petition dated 23rd May 2025 is hereby struck-out;**

iv. **Sam Krus Shollei is hereby ordered to issue a public apology to the Applicant in the same manner and prominence as the notice was published, retracting the insolvency allegations within the next fourteen (14) days.**

v. **Failure to comply with the Order in (iv) above and tender the unqualified apology shall lead to an imposition of Damages in lieu of apology assessed at this Court at kshs 500,000/-**

vi. **I grant Costs of this application to the Applicants.**

vii. **Interest if any shall be at the Court's rates.**

It is so ordered.

Dated, signed and delivered at Nakuru
on this 20th day of January 2026

_____

Mohochi S.M.
JUDGE