

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
COMMERCIAL AND TAX DIVISION
INSOLVENCY CAUSE NO. E012 OF 2023

IN THE MATTER OF:
THE INSOLVENCY ACT CAP 53 LAWS OF KENYA
AND
IN THE MATTER OF: RE YUSUF ABDIWAHAB ALI

RULING

1. This ruling concerns the Notice of Motion dated 14th May 2025, filed by the Applicant/Debtor, Yusuf Abdiwahab Ali, pursuant to sections 33 and 34 of the Insolvency Act, sections 1A and 3A of the Civil Procedure Act, and all other enabling provisions of the law.
2. The Applicant seeks orders that the Court appoint an authorized insolvency practitioner and, in the alternative, that the Court appoint an interim trustee from the Office of the Official Receiver to prepare a report in accordance with section 34 of the Insolvency Act.
3. The application is supported by the affidavit of the Applicant, sworn on 14th May 2025, in which he deposes that he has instituted bankruptcy proceedings against himself, obtained a certificate of compliance from the Official Receiver, and that no insolvency practitioner has been appointed to

prepare the statutory report envisaged under section 34 of the Act.

4. The application is opposed by Gulf African Bank Limited, a creditor, on the grounds of opposition dated 21st May 2025.
5. The Respondent contends, inter alia, that the application is premature, misconceived, and fatally defective, as the Court has not adjudged the Applicant bankrupt. It is argued that under section 33 of the Insolvency Act, the appointment of an insolvency practitioner can only arise upon satisfaction of the statutory threshold, including proof of factual and commercial insolvency.
6. The Respondent further asserts that the Applicant has failed to comply with section 32(2) of the Insolvency Act and Regulation 18 of the Insolvency Regulations, particularly the requirement to file a complete statement of financial affairs. It is also contended that the Applicant seeks to obtain final reliefs through an interlocutory application prior to the determination of the substantive bankruptcy petition, thereby abusing the court process.

Submissions

7. The application was heard by way of written submissions. The Applicant submits that the application flows directly from the Court's directions issued on 7th May 2025, wherein the Court directed that a formal application be filed to invoke its mandate under section 33 of the Insolvency Act.

8. The Applicant argues that sections 33 and 34 of the Insolvency Act operate at the hearing stage of a debtor's bankruptcy application, and that the report prepared thereunder is intended to assist the Court in determining whether a bankruptcy order or a voluntary arrangement should issue. It is submitted that the Respondent has misconstrued the law by conflating the appointment of an insolvency practitioner with the issuance of a bankruptcy or receiving order.
9. Reliance is placed on In **Re James Mutuku Musau [2020] KEHC 9719 (KLR)**, where the Court appointed an insolvency practitioner prior to the determination of the bankruptcy petition, holding that the report under section 34 is a facilitative tool for the Court.
10. Conversely, the Respondent maintains that the Insolvency Act does not permit the appointment of an insolvency practitioner in the absence of proof of insolvency and compliance with statutory prerequisites. Reliance is placed on In **Re Johnson Mwendwa Muthengi [2022] KEHC 15657 (KLR)** and In **Re Leonard Kipkoech Terer [2025] KEHC 5874 (KLR)**.

Analysis and determination

11. Having considered the application, the affidavits, the grounds of opposition, and the rival submissions, the Court is of the view that the single issue for determination is: *whether the Applicant has satisfied the legal threshold for*

the appointment of an insolvency practitioner under section 33 of the Insolvency Act pending the hearing of the bankruptcy petition.

12. Section 33 of the Insolvency Act provides that on the hearing of a debtor's application, the Court may appoint an authorized insolvency practitioner where it appears appropriate to do so for purposes of preparing a report under section 34 of the Act.
13. Section 34 mandates the appointed practitioner to inquire into the debtor's financial affairs and to advise the Court on whether the debtor is willing and suitable for a voluntary arrangement.
14. Kenyan courts have consistently emphasized that bankruptcy proceedings are intended to balance the interests of distressed debtors and creditors, and that insolvency reliefs are not to be deployed as a shield against lawful obligations without observance of statutory safeguards. This principle was underscored in **Re Johnson Mwendwa Muthengi [2022] KEHC 15657 (KLR)**.
15. That said, this Court is persuaded that the appointment of an insolvency practitioner under section 33 is not synonymous with the issuance of a bankruptcy or receiving order. The report contemplated under section 34 is investigatory and advisory in nature and is designed to assist the Court at the substantive hearing of the bankruptcy petition.

16. An insolvency practitioner's report is an independent statutory mechanism intended to aid the Court in making an informed determination on the appropriate insolvency outcome.
17. In the present case, the Applicant has already lodged a bankruptcy petition and avers compliance with preliminary procedural requirements, including engagement with the Official Receiver. The Court is satisfied that the application does not seek final insolvency reliefs, but rather invokes a statutory step expressly contemplated by Parliament to inform the Court's eventual determination.
18. To decline the appointment at this stage would, in the Court's view, undermine the architecture and purpose of sections 33 and 34 of the Insolvency Act, which envisage a structured, evidence-based inquiry before substantive insolvency orders are made.
19. The Court is therefore satisfied that the threshold for appointment of an insolvency practitioner under section 33 has been met.

Disposition

20. In the premises, the Notice of Motion dated 14th May 2025 is merited and is allowed on the following terms:
 - i. Kereto Marimashall is hereby appointed pursuant to section 33(d) of the Insolvency Act to prepare and file a report in accordance with section 34 of the Act.***

- ii. In default of agreement on the insolvency practitioner, the Official Receiver shall nominate a suitable authorized insolvency practitioner for appointment by the Court.***
- iii. The report shall be filed within such period as the Court shall direct.***
- iv. The costs of the application shall be in the cause.***

Orders accordingly.

RULING delivered virtually, dated and signed at **NAIROBI**

This **29th** day of **January** 2026.

P.M. MULWA

JUDGE

In the presence of:

Mr. Esilaba for Petitioner/Applicant

Mr. Otieno for Creditor (Gulf Bank)

Court Assistant: *Carlos*