

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**INSOLVENCY NOTICE NO. E171 OF 2022**

WILLY SHIKUKU OOKO.....PETITIONER

-VERSUS-

AGENCY FOR DEVELOPMENT

RESEARCH LIMITED.....RESPONDENT

**JUDGMENT**

1. The petitioner filed a petition against the respondent under the provisions of Section 425 of the Insolvency Act and all other enabling laws of Kenya seeking orders that the respondent company be liquidated and that its assets be seized and applied towards payment of the outstanding debt of Kshs.206,213.00, together with interest thereon at Court rates from 2016 until payment in full.
2. The petition is premised on the grounds on the face of it, and it is supported by a verifying sworn on 20<sup>th</sup> June 2023 by Mr. Willy Shikuku Ooko, the petitioner herein. The petitioner's case is that the respondent is a limited liability company incorporated on 27<sup>th</sup> June 2012 and carrying on business in Nairobi within the jurisdiction of this Court. He contended that the respondent's objects include providing research, team-building and training services, and it has a nominal share capital of Kshs.100,000/= with Kshs.500,000/= paid up. Mr. Ooko stated that the respondent became indebted to it in the sum of Kshs.206,213.00 arising from a consultancy contract for training services entered into on 15<sup>th</sup> July 2014, under which the petitioner was to be paid USD 1,487.50 upon release of funds by Kenya Commercial Bank (KCB) Burundi.

3. He averred that although the funds were released to the respondent in August 2014, it failed to remit the same to him, prompting the filing of **Civil Suit No. 6050 of 2014**, which was determined in his favour and a decree was issued on 14<sup>th</sup> December 2015 for Kshs.206,213.00 together with costs and interest. The petitioner asserted that efforts to execute the decree were unsuccessful as no attachable assets could be found, and that he holds no security over the respondent's assets.
4. Mr. Ooko stated that a statutory demand for payment was served on the respondent on 9<sup>th</sup> February 2023, but the respondent neither paid nor applied to set it aside within the prescribed 21 days. He further stated that despite communication with one of the respondent's Directors, the respondent has failed to honour the debt and has become evasive. He maintained that the debt is within the insolvency threshold under the Insolvency Act, and that the respondent is unable or has no reasonable prospect of paying it.
5. This petition was canvassed by way of written submissions. The petitioner's submissions were filed on 10<sup>th</sup> July 2025 by the law firm of Owino Bukachi & Company Advocates. From the Court record and the Judiciary Case Tracking System, the respondent neither filed written submissions nor made oral submissions in opposition to the instant petition.
6. Ms Bukachi, learned Counsel for the petitioner submitted that the winding-up petition is properly grounded on Sections 384(1)(a) and (b) of the Insolvency Act, 2015, as the respondent failed to comply with a statutory demand for a liquidated sum exceeding Kshs.100,000/= within 21 days and execution of a valid decree has been returned unsatisfied. Counsel stated that the respondent is indebted to the petitioner in the sum of Kshs.206,213.00, plus costs and interest arising from a Judgment delivered on 9<sup>th</sup> September 2015, which has neither

been successfully appealed against nor stayed, and the debt remains unpaid despite repeated demands.

7. Ms Bukachi stated that the statutory demand served to the respondent on 9<sup>th</sup> February 2023 was not complied with, and no application was made to set it aside, thereby deeming the respondent unable to pay its debts within the meaning of the Insolvency Act. She further stated that the petitioner has complied with all procedural requirements under Section 424(1)(e) of the Insolvency Act and Rule 77B of the Insolvency Regulations, and the debt is not disputed. Relying on the decision in the case of **Re Kipsigis Stores Limited** [2018] KEHC 5155 (KLR), Counsel asserted that the legal threshold for winding up has been met and urged the Court to grant the reliefs sought, as the respondent's failure to respond demonstrates insolvency and lack of capacity or willingness to settle its debts.

#### **ANALYSIS AND DETERMINATION.**

8. I have considered the instant petition, the affidavit filed in support thereof and the written submissions by Counsel for the petitioner. The issue that arises for determination is whether a liquidation order should issue against the respondent company.
9. From the evidence on record, it is not in dispute that the respondent is indebted to the petitioner in the sum of Kshs.206,213.00 arising from a Consultancy Agreement dated 15<sup>th</sup> July 2014. It is also not disputed that Judgment was entered in favour of the petitioner in **Civil Suit No. 6050 of 2014** and a decree issued on 14<sup>th</sup> December 2015, for the said amount together with costs and interest. No evidence has been placed on record demonstrating that the said Judgment has been stayed, set aside, varied and/or altered by a Court of competent jurisdiction. There is also no evidence that the respondent company

has fulfilled or attempted to fulfill the said decree by paying the petitioner the entire or part of the sum of Kshs.206,213.00 being the decretal sum.

10. The petitioner has further successfully demonstrated that attempts to execute the decree were unsuccessful by producing warrants of sale of property in execution of decree for money and warrants of attachment of movable property in execution of decree for money as no attachable assets of the respondent could be traced. This position is supported by the uncontroverted deposition that the said warrants were returned unsatisfied. In addition to the foregoing, it is evident from the pleadings filed that the respondent was served with a statutory demand on 9<sup>th</sup> February 2023 requiring payment of the debt, but failed to either settle the amount or apply to set aside the demand within the statutory period of 21 days.
11. The petitioner therefore instituted this petition against the respondent pursuant to the provisions of Section 425(1)(b) of the Act, which provides that –

***An application to the Court for the liquidation of a company may be made any or all of the following-***

***a) ...;***

***b) a creditor or creditors (including any contingent or prospective creditor or creditors);...***

12. Section 424(1) of the Insolvency Act, 2015, provides for circumstances under which a Company may be liquidated by a Court. It states that –

***A company may be liquidated by the Court if-***

***a) the company has by special resolution resolved that the company be liquidated by the Court;***

- b) being a public company that was registered as such on its original incorporation –***
  - i) the company has not been issued with a trading certificate under the Companies Act (Cap. 486); and***
  - ii) more than twelve months has elapsed since it was so registered;***
- c) the company does not commence its business within twelve months from its incorporation or suspends its business for a whole year;***
- d) except in the case of a private company limited by shares or by guarantee, the number of members is reduced below two;***
- e) the company is unable to pay its debts;***
- f) at the time at which a moratorium for the company ends under section 645—a voluntary arrangement made under Part IX does not have effect in relation to the company; or***
- g) the Court is of the opinion that it is just and equitable that the company should be liquidated.***

13. From the affidavit evidence on record, it is clear that in this case, the petitioner relies on the provisions of Section 424(1)(e) in urging this Court to liquidate the debtor, to the effect that the respondent herein, is unable to pay its debts. Section 384 of the Insolvency Act, 2015, provides for the circumstances under which a company may be deemed unable to pay its debts. It provides that -

- 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;*

*b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or*

*c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due.*

*2) A company is also unable to pay its debts for the purposes of this Part if it is proved to the satisfaction of the Court that the value of the company's assets is less than the amount of its liabilities (including its contingent and prospective liabilities).*

*3) The insolvency regulations may increase or reduce the amount specified in subsection (1) (a).*

14. As explained hereinbefore, the petitioner has a valid decree against the respondent which he has been unable to execute. The petitioner took out warrants of attachment against the respondent, but the said warrants were returned unsatisfied. Thereafter, on 9<sup>th</sup> February 2023, the petitioner served upon the respondent a statutory demand dated 23<sup>rd</sup> November 2022 demanding the decretal sum of Kshs.206,213.00, but the respondent failed to comply with the said demand, necessitating these proceedings. I am therefore persuaded that the petitioner has demonstrated on a balance of probability that the respondent is not only unable to pay its debts, but it is also indebted to him in the sum of Kshs. 206,213.00 by virtue of the Judgment entered in favour of the petitioner as against the respondent on 9<sup>th</sup> September 2015 and a resultant decree for the sum of Kshs.206,213.00 issued on 14<sup>th</sup> December 2015.

15. The Court of Appeal in the case of **Prideinn Hotels & Investments Limited v Tropicana Hotels Limited** [2018] KECA 651 (KLR), with Visram JA. reading the majority Judgment of the Court, held as follows-

*This was clearly the case herein since the appellant did not make any payments after being served with a notice of demand by the respondent. Hence the respondent was entitled to bring a petition for liquidation of the appellant on the ground of its inability to pay its debt. Equally, I find no fault on the part of the learned Judge for issuing the liquidation order. There is no requirement under the Insolvency Act or the Companies Act, which stipulates that liquidation of a company should be as a last resort. Liquidation is one of the options under the Insolvency Act which a creditor such as the respondent in the case, could pursue to secure payment of a debt, especially a debt that remains unpaid for several years and in respect of which the appellant has been given adequate time, opportunity and indulgence.”*

16. In view of the above decision, and the analysis I have made in this petition, it is my finding that there is sufficient evidence to the effect that the respondent is unable to pay its debts.
17. In the circumstances, this Court finds that the legal threshold for liquidation of the respondent company has been met. The petition is therefore merited and it is allowed in the following terms -

- i) That Agency For Development Research Limited is hereby declared insolvent and liquidated under the provisions of the Insolvency Act;**

- ii) The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed as the Liquidator of the respondent's properties; and**
- iii) Costs of the petition shall be borne out of the respondent's assets**

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI on this 23<sup>rd</sup> day of January 2026. Judgment delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of**

Ms Bukachi for the petitioner

No appearance for the respondent

Ms B. Wokabi - Court Assistant.