Ranguma v Mercantile Insurance Co L (Now t/a Mua Insurance (Kenya) Ltd) (Insolvency Cause E016 of 2024) [2026] KEHC 833 (KLR) (Commercial and Tax) (30 January 2026) (Ruling)

Neutral citation: [2026] KEHC 833 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

INSOLVENCY CAUSE E016 OF 2024

FG MUGAMBI, J

JANUARY 30, 2026

BETWEEN

JACKTON RANGUMA ..... APPLICANT

AND

MERCANTILE INSURANCE CO L (NOW T/A MUA INSURANCE (KENYA) LTD) ..... RESPONDENT

RULING

1. For determination is the Notice of Motion application dated 6th March 2023 by which the applicant seeks an order to set aside the statutory demand issued on 30th January 2024. The application is supported by the affidavit and further affidavit sworn on 6th March 2023 and 1st July 2025 respectively. It is opposed through a replying and supplementary affidavit, sworn on 6th May 2024 and 6th August 2022 respectively. The parties also filed their written submissions which I have carefully considered.

Analysis and Determination

2. Under Regulation 17(6) of the Insolvency Regulations 2016, this Court has discretion to set aside a statutory demand in specific circumstances such as where:

> "(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."

3. Upon a careful consideration of the pleadings and the written submissions filed by both parties, it is evident to me that the central issue for determination is the precise amount due and owing to the respondent under the statutory demand. This contention squarely brings the matter within the ambit of paragraph (b) of Regulation 17(6) of the Insolvency Regulations, which empowers the Court to set aside a statutory demand where the debt is disputed on grounds that appear to be substantial.

4. The critical question, therefore, is whether the applicant has discharged the burden of demonstrating that the dispute raised meets the requisite threshold, namely, that it is not frivolous or illusory, but rather one that is bona fide, supported by credible evidence, and sufficiently weighty to warrant judicial investigation.

5. In addressing this question, guidance is found in the decision of Flower City Limited V Polytanks & Containers Kenya Limited, [2021] KEHC 34 (KLR), where Mativo, J [as he then was] elaborated on the standard applicable when a debtor seeks to dispute a debt in insolvency proceedings. The Court emphasized that such a dispute must be genuine and substantial, rather than superficial or contrived.

6. A genuine dispute is one that raises a plausible contention requiring judicial investigation, is advanced in good faith, and rests on a real factual foundation. It must present a serious question fit for trial, go beyond mere bluster or bare assertions, and possess sufficient substance and cogency to be arguable. Crucially, it should be supported by objective evidence and articulated with adequate factual particularity.

7. Conversely, the Court cautioned that disputes which are spurious, hypothetical, illusory, misconceived, vexatious, or frivolous cannot meet the threshold. Claims that are plainly devoid of substance, fanciful, futile, or amount to nothing more than empty assertions will not suffice. In essence, only disputes that demonstrate real merit and are grounded in credible facts can justify the setting aside of a statutory demand and prevent the commencement of insolvency proceedings.

8. Turning now to the matter before me, it is evident that both parties have set out in detail the background to the dispute and have each advanced substantive arguments in support of their respective positions. What is not contested, however, is that this Court has already pronounced itself on the issue of the debt owing, in a Ruling dated 22nd September 2023 (Njoki Mwangi, J). In that decision, the Court made a clear finding that:

> " Based on the foregoing factors, it is my finding that the debt due to the decree-holder from the judgment-debtor as at March 2023 when the decree-holder received the last instalment from the judgment-debtor, is Kshs.9,333,004.58 and USD 48,881.20."

9. Consequent upon that finding, the Court issued orders, including the making absolute of the Garnishee Order Nisi dated 10th July 2023. The order specifically directed the attachment of the sum of Kshs. 7,896,639.20, being the credit balance held in the applicant/judgment-debtor's Bank Account No. 0361002814 at Absa Bank Kenya PLC, Premier Flagship Centre Branch.

10. I am mindful that in light of that decision this Court lacks jurisdiction to override or revisit a decision that has already been conclusively determined. The question of the precise amount due and owing has already been adjudicated, and therefore remains sub judice, properly reserved for appellate

consideration. The applicant has indeed indicated that he has moved to the Court of Appeal, having filed an application for extension of time to lodge an appeal against this decision.

11. In support of that contention, the applicant has placed before me a copy of the Ruling in Civil Application No. NAI E514 of 2023, arising from his application dated 22nd September 2023. In deference to the principle of comity of courts and the hierarchy of jurisdiction, I shall therefore refrain from delving into issues that are now squarely before the Court of Appeal.

12. Of particular relevance, however, is the finding of the learned Judge of Appeal (M. Gachoka, JA), at paragraph 7 of the said Ruling. The Court of Appeal observed that:

> "The facts relating to this matter are not contested as both the applicant and the 1st respondent agree that the dispute is on the amount payable. The applicant contended that it had settled the decretal amount. This is disputed by the respondent. ..."

13. Further, at paragraph 9, the learned Judge went on to note as follows: 'I have looked at the Memorandum of Appeal and I can only say that it raises arguable grounds that may succeed and I say no more'. The application was accordingly allowed, and the applicant, Summit Travel Agencies, was granted leave to file its appeal out of time.

14. Accordingly, I am persuaded that declining to allow the present application and proceeding with insolvency proceedings in the face of an already pending appeal would be both prejudicial and a wasteful exercise of judicial resources. The Court of Appeal has expressly found that the intended appeal raises arguable grounds, and it has granted leave to the applicant to file the appeal out of time.

15. To press forward with these proceedings at this stage would risk undermining the appellate process and could result in grave injustice. The repercussions of a liquidation or bankruptcy order, once issued, are far-reaching and largely irreversible, as they would fundamentally alter the corporate existence of the applicant before the Court of Appeal and prejudice not only these parties but also third-party stakeholders.

16. It is therefore prudent and consistent with the principles of justice, comity of courts, and judicial economy that this Court refrains from entertaining insolvency proceedings until the appellate process has run its course.

Disposition

17. For these reasons the Notice of Motion dated 6th March 2023 is hereby allowed and the statutory demand dated 30th January 2024 is set aside. The costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 30TH DAY OF JANUARY 2026.

F. MUGAMBI

JUDGE

Delivered in presence of:

Mr Odhiambo for the judgment debtor/applicant

Ms Shah and Ms Omamo for the creditor/respondent

Court Assistant: Lillian