

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & TAX DIVISION
INSOLVENCY CASE NO. E151 OF 2023
IN THE MATTER OF INSOLVENCY ACT NO. 18 OF 2015

AND

IN THE MATTER OF BANKRUPTCY OF GLORIA MWENDWA
KABERIA
(DEBTOR)

AND

IN THE MATTER OF CHECHA TRADING COMPANY LIMITED
(CREDITOR)

CHECHA TRADING COMPANY
LIMITED.....PETITIONER/CREDITOR

VERSUS

GLORIA MWENDWA KABERIA.....
RESPONDENT/DEBTOR

JUDGMENT

1. This a Judgement relating to the Creditor’s Petition dated 30th January, 2024.

Background Facts

2. The Creditor filed the Petition dated 30th January 2024 against the Debtor who has resided at Nairobi Block 112/214

within the Court's jurisdiction during the year preceding the Petition. She is alleged to owe the Creditor a total of Kshs. 1,800,000, representing rent arrears and utilities for the leased premises. The Creditor confirmed that no security is held over **GLORIA MWENDWA KABERIA'S** assets to cover the debt. That the amount owed falls within the statutory bankruptcy threshold under the Insolvency Act and Rules.

3. The Petitioner asserted that the Debtor is unable or has no reasonable prospect of paying the debt. No application has been made to set aside the statutory demand, and twenty-one days have passed since it was served without compliance. Furthermore, the Creditor is unaware of any bankruptcy offences committed by **GLORIA MWENDWA KABERIA** within the two years preceding the petition.
4. Despite being served by the Petitioner as evidenced by the numerous Affidavits of Service, the Debtor did not file any response to the Petition.

Issues for determination

5. The Court has carefully considered the Petitioner's Petition as well as the written submissions, and the issues for determination are;

a) Whether the Creditor's Petition has complied with the provisions of the Act and the Regulations thereunder.

b) Whether an order of bankruptcy should issue in the circumstances.

Analysis

6. It was the Petitioner's case that it has materially complied with the provisions of the Act and the Insolvency Regulations. The Statutory Demand has been made and served upon the debtor. It gives her the requisite period to make payment and it is only after she failed to pay that this Petition was filed. The Petition was gazetted, and the gazette notice has been filed and an affidavit of service to that effect is on record.

7. **Section 17 of the Insolvency Act** provides: -

“(1) One or more creditors of a debtor may make an application to the Court for a bankruptcy order to be made in respect of the debtor in

relation to a debt or debts owed by the debtor to the creditor or creditors.

(2) Such an application may be made in relation to a debt or debts owed by the debtor only if, at the time the application is made: -

(a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the prescribed bankruptcy level;

(b) the debt, or each of the debts, is for a liquidated amount payable to the applicant creditor, or one or more of the applicant creditors, either immediately or at some certain, future time, and is unsecured;

(c) the debt, or each of the debts, is a debt that the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay; and

(d) there is no outstanding application to set aside a statutory demand in respect of the debt or any of the debts.

(3) For the purposes of subsection (2)(c), a debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

(a) the applicant creditor to whom the debt is owed has served on the debtor a demand requiring the debtor to pay the debt or to secure

or compound for it to the satisfaction of the creditor, at least twenty—one days have elapsed since the demand was served, and the demand has been neither complied with nor set aside in accordance with the insolvency regulations; or
(b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the applicant, or one or more of the applicants to whom the debt is owed, has been returned unsatisfied either wholly or in part.

(4) For the purposes of subsection (2)(c), a debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and: -

(a) the applicant to whom it is owed has served on the debtor a demand requiring the debtor to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due;

(b) at least twenty—one days have elapsed since the demand was served; and

(c) the demand has been neither complied with nor set aside in accordance with the insolvency regulations.

(5) This section is subject to sections 18 to 20.

(6) An overstatement in a statutory demand of the amount owing by the debtor does not invalidate the demand unless—

(a) the debtor notifies the creditor that the debtor disputes the validity of the demand because it overstates the amount owing; and

(b) the debtor makes that notification within the period specified in the demand for the debtor to comply with it.

(7) A debtor complies with a demand that overstates the amount owing by—

(a) taking steps that would have complied with the demand had it stated the correct amount owing, such as by paying the creditor the correct amount owing plus costs; and

(b) taking those steps within the period specified in the demand for the debtor to comply.”

8. Section 25 of the Insolvency Act provides that: -

“(1) The Court may make a bankruptcy order in respect of the debtor if the creditor has complied with Section 7.

(2) The Court may refuse to adjudge a debtor bankrupt if—

(a) the applicant creditor has not satisfied the requirements specified in section 17;

***(b) the debtor is able to pay the debtor's debts;
or
(c) it is just and equitable that the Court should
not make a bankruptcy order.”***

**a) Whether the Creditor’s Petition has complied
with the provisions of the Act and the
Regulations thereunder.**

9. The Court has considered the evidence availed and is satisfied that the Creditor has duly complied with the law under **Section 17 of the Insolvency Act**. The debt owed has been specified. The debtor is unable to pay the debt and, under the law, is presumed to be unable to pay the debt of Kshs. 1,800,000 as she did not comply with or apply to set aside the Statutory Demand.

**b) Whether an order of bankruptcy should issue in
the circumstances.**

10. The Court is satisfied that sufficient grounds have been laid for granting the orders sought. The evidence led also supports the grant of the bankruptcy order.

11. Accordingly, **GLORIA MWENDWA KABERIA**, the Debtor herein, is adjudged bankrupt as she is unable to pay

her debts. Costs of the Petition are awarded to the Petitioner.

Determination

12. The Creditor's Petition dated 30th January, 2024 is allowed in the following terms;
- (a) The Respondent/Debtor is hereby adjudged bankrupt and a bankruptcy order is issued as prayed.*
 - (b) The Official Receiver or a person nominated by the Official Receiver is hereby appointed as the Bankruptcy Trustee in respect of the Respondent/Debtor's estate.*
 - (c) The costs of the Petition are awarded to the Petitioner.*
 - (d) This order and a copy of the Judgement are to be served upon the Offices of the Official Receiver, by the Petitioner within the next Fourteen (14) days from the date of this Judgement.*
13. It is so ordered.
14. This file is marked as closed.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 12TH
DAY OF FEBRUARY, 2026.**

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Mungu for the Petitioner/Creditor.

N/A for the Respondent/Debtor.

Peter Wabwile - Court Assistant