



REPUBLIC OF KENYA



**Kuza Factors Limited v Eastmeat Supplies Limited (Insolvency Petition E044 of 2023)
[2026] KEHC 1214 (KLR) (Commercial and Tax) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1214 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E044 OF 2023**

F GIKONYO, J

FEBRUARY 5, 2026

BETWEEN

KUZA FACTORS LIMITED PETITIONER

AND

EASTMEAT SUPPLIES LIMITED DEBTOR

RULING

1. The debtor seeks in the notice of motion dated 27.1.2025 for the dismissal of the liquidation petition dated 6.6.2023.
2. The application is made under sections 3(1)(c), 427(1) (a), (b) and (d) of the *Insolvency Act* and Regulation 10 of the Insolvency Regulations. It is supported by the affidavits sworn by Meshack Mulevu Mwau on 21.1.2025 and 4.3.2025 and written submissions dated 29.4.2025.
3. The grounds are: -
 1. The company is solvent.
 2. The petition is brought in bad faith coupled with misrepresentation of material facts and ought to be struck out in limine.
 3. It is premised on unsubstantiated allegations of fraud and does not meet the threshold for granting a liquidation order.
 4. The debtor is not indebted to the petitioner. The petitioner has failed to demonstrate how much money it advanced to the company and how much money it received from the company in repayment.



5. The proceedings have been initiated prematurely and will have the effect of ending the life of a corporate entity contrary to the express provisions of the *Insolvency Act*.
6. The petition discloses no cause of action and constitutes an abuse of the process of the court.

Response

4. The petitioner opposed the application through a replying affidavit sworn by its managing director, William Nyaoke on 12.2.2025 and written submissions dated 28.6.2025.
5. The petitioner contended that: -
 1. The application is bad in law, frivolous, meant to delay these proceedings further and the court's judicious time.
 2. The debtor failed to challenge the statutory demand within 21 days, thus the application is an afterthought.
 3. Section 427 (1) (a), (b) and (d) of the *Insolvency Act* can only be invoked during the hearing of the liquidation petition on merits, not interlocutory stage.
 4. The grounds in support of the application relate to the material facts pertaining to the petition. The debtor ought to have filed a supporting affidavit and the failure to do so offends Order 51 Rule 4 of the Civil Procedure Rules.
 5. The application is decoy to avoid liability and settlement of the amount owed.

Debtor's Reply

6. The debtor highlighted that it filed the replying affidavit sworn by Meshak Mulevu on 21.1.2025 on which its application is well founded.
7. The debtor denied that the application is either an abuse of the court process or a delay tactic. It asserted that the negotiations between the parties failed because no consensus was reached on the existence of the alleged debt, not because it did not honour promises. It highlighted that no consent has been produced before court to show any commitment capable of breach as alleged.

Submissions

8. The debtor contended that the annexures produced by the petitioner in the affidavit in support of the petition and the replying affidavit in response to the application offend Rule 9 of the Commissioner for Oaths Rules. It relied on Kenya National Union of Nurses v Kiambu County Public Service and 5 Others [2019] eKLR and Agoro & 2 others v Ethics & Anti-Corruption Commission & 4 others [2024] eKLR where the court recognized that annexures must be marked and sealed by a commissioner. It therefore urged the court to expunge the annexures as they are inadmissible.
9. The debtor relied on Universal Hardware Limited v African Safari Club Limited [2013] eKLR to assert that the liquidation petition should be struck out as the debt is disputed on substantial grounds.
10. The debtor also relied on Flower City Limited v Poly tanks & Containers Kenya Limited (Insolvency Cause 033 of 2020) [2021] KEHC 34 (KLR) on the considerations for determining whether a debt is disputed on substantial grounds.
11. The petitioner relied on University of Nairobi v George Mabele Sifuna [2021] KEELRC 279 (KLR) to argue that an applicant seeking interlocutory orders should file a motion accompanied by a supporting



- affidavit. It also relied on *James Kiiru Mwangi v Gibson Kimani Mwangi & another* [2020] eKLR where the court relying on order 51 Rule 1 of the Civil Procedure Rules dismissed an application grounded on evidence that was not supported by an affidavit.
12. The petitioner also relied on *Yooshin Engineering Corporation v AIA Architects Ltd* [2020] KECA 266 (KLR) and *Simon Muteti Mutune v Cooperative Bank of Kenya Limited* [2015] KEELC (KLR) to support the proposition that the failure to file a supporting affidavit is an incurable defect.
 13. The petitioner relied on *Pride Inn Hotels & Investments Limited v Tropicana Hotels Limited* [2018] eKLR to submit that there is no requirement under the *Insolvency Act* or the *Companies Act* which stipulates that liquidation of a company should be a last resort.
 14. The petitioner submitted that failure to seal all exhibits is not fatal and is curable. It relied on *Republic v Public Procurement Administrative Review Board & another; Ian Soft Technologies Limited (Interested Party); Green Com Enterprise Solutions Limited (Exparte) Application E148 of 2024* [2024] KEHC 10081 (KLR) (Civ) (13 August 2024) (Judgment) and *Spire Properties (K) Limited v Gikandi Ngibuni t/a Gikandi & Co Advocates & 12 others (Civil Application E058 of 2022)* [2023] KECA 464 (KLR) (28 April 2023) (Ruling).
 15. The petitioner relied on *Universal Hardware Limited v African Safari Club Limited* [2013] KECA 507 (KLR) in urging the court to dismiss the application and allow the parties to ventilate the petition on merit. It also relied on *Kwale International Sugar Company Limited v Epcu Builders Limited & 2 others (Civil Appeal 208 of 2020)* [2025] KECA 227 (KLR) (7 February 2025) (Judgment)

Analysis and Determination

16. The instant application is brought under Section 427 (1) of the *Insolvency Act*, which provides that: -
 - “ 427. Powers of Court on hearing of liquidation application
 - (1) On the hearing of a liquidation application, the Court may make such of the following orders as it considers appropriate—
 - (a) an order dismissing the application;
 - (b) an order adjourning the hearing, conditionally or unconditionally;
 - (c) an interim liquidation order; or
 - (d) any other order that, in its opinion, the circumstances of the case require.”
17. The petitioner questioned the debtor’s right to invoke Section 427 (1) (a), (b) and (d) of the *Insolvency Act* at an interlocutory stage. Conversely, the debtor argued that nothing impeded the court’s jurisdiction to determine this application.
18. The late Justice Majanja in *Synergy Industrial Credit Limited v Multiple Hauliers (EA) Limited* [2020] KEHC 3103 (KLR) found that the court has jurisdiction to entertain a similar application, observing that: -
 - “ 53. Although the aforesaid provisions seem to suggest, as counsel for the opposing creditors have submitted, the court can only exercise those powers at a hearing, the inherent power of the court to entertain any interlocutory applications



which is incidental and ancillary to the jurisdiction to “supervise liquidation” cannot be gainsaid. The power to entertain applications other than the hearing of the petition is an inherent and necessary power of the court to do justice to the parties and to prevent an abuse of the court process....

54. I would even go further and hold that “hearing of a liquidation application” under section 427(1) of the Act encompasses the hearing of interlocutory applications, giving directions and doing all things that go into processing the liquidation application to its conclusion.”

19. This court aligns with the view that Section 427 (1) (a), (b) and (d) of the *Insolvency Act* does not limit the jurisdiction of the court to the actual hearing of the liquidation petition on merits; the court may also hear interlocutory or preliminary applications which are incidental to or necessary in the petition under the said section.

Failure to challenge the statutory demand

20. The petitioner faulted the debtor for failing to challenge the statutory demand within 21 days, arguing that the instant application is an afterthought.

21. In the Synergy case [supra], the court noted that the applicant had not contested the statutory demand. There is no bar to the debtor bringing this application because it has not contested the statutory demand.

22. However, the Court of Appeal in *Pride Inn Hotels & Investments Limited v Tropicana Hotels Limited* [2018] eKLR, observed that: -

“(38) ... 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.”

23. The debtor urged the court to dismiss the liquidation petition for non-compliance with the rules of evidence and for failure to prove the alleged debt.

Failure to file a supporting affidavit

24. The petitioner raised objection that, failure to file an affidavit to accompany its application deprived the application of the evidence in support thereof. It relied on Order 51 Rule 1 of the Civil Procedure Rules requires an affidavit filed where the motion is grounded on evidence.

25. Conversely, the debtor asserted that the application is founded on its replying affidavit to the petition. It also filed a supplementary affidavit.

26. Therefore, the ground that the application ought to be dismissed as it is not supported by an affidavit has been overtaken.

Unsealed Annexures

27. The debtor contended that the annexures produced by the petitioner in the affidavit in support of the petition have not been sealed under the seal of the Commissioner as required under Rule 9 of the Commissioner for Oaths Rules.



28. The petitioner faulted the debtor for raising this issue through its supplementary affidavit and not the application. It submitted that the documents to support the petition were to be formally produced by it at the time of full hearing. It also submitted that the petition is distinguishable from an affidavit supporting an application. It added that it filed the statutory demand which were endorsed by the registrar and served upon the debtor on 28th April 2023 and a certificate of compliance issued by the official receiver.
29. Through its replying affidavit sworn by William Nyaoke, the petitioner exhibited the affidavit in support of the petition sworn on 3.7.2023. The affidavit contains a list of the documents filed in support of the liquidation petition. It also contains a prayer that the annexed documents be taken as exhibits before the court. It is commissioned by Samora Owino.
30. Article 159 (2) (d) requires the court to administer substantive justice without undue regard to procedural technicalities. In my view, the fact that the annexures are not sealed do not warrant a striking out of the petition and the affidavit. The defect is curable as the petitioner may be accorded an opportunity to file a further affidavit for the purpose of complying with rule 9.
31. Therefore, I find no merit in the debtor's contention.

No proof of debt

32. The debtor's substantive ground is that the petition is premised on unsubstantiated allegations of fraud and does not meet the threshold for granting a liquidation order.
33. In response, the petitioner asserted that the grounds in support of the application relate to the material facts pertaining to the petition.
34. I have considered the debtor's arguments and counterarguments in this respect and I am of the view that these issues ought to be considered upon full hearing of the liquidation petition. Nonetheless, existence of the debt has been challenged which the parties must address in their submissions on the petition.

Disposal

35. Therefore, the issues raised in the debtor's application dated 27.1.2025 shall form part of the hearing of the petition. The court shall give directions on the hearing of the petition.
36. As parties agree, the hearing of the liquidation petition dated 6.6.2023 is deferred to allow amicable settlement of the issues herein.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 5TH DAY OF FEBRUARY, 2026

F. GIKONYO M
JUDGE

In the presence of: -

Wafula for petitioner

Ekusa for debtor

CA - Kinyua

