



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CORAM: F. MUGAMBI, J**  
**INSOLVENCY PETITION. NO. E057 OF 2023**  
**BETWEEN**

**WINGRACE WANJIKU WAMBUGU .....**  
**PETITIONER**

**VERSUS**

**THE MONARCH INSURANCE CO LTD .....**  
**RESPONDENT**

**JUDGMENT**

**Background and Introduction**

1. For determination, is the Petition dated 7<sup>th</sup> August 2023 filed by **Wingrace Wanjiku Wambugu**. The petitioner seeks an order of liquidation against the respondent company, for reasons that she has been unable to recover from it, the sums of Kshs.3,507,267.68. arising from a judgment and decree in **SPMCC No.349 of 2022**. She regrets that her efforts to execute against the respondent

have been futile as her auctioneers have been frustrated by the company. She confirms service of a statutory demand upon the respondent and further that the same has not been set aside by this court.

2. By a Supplementary Affidavit sworn on 31<sup>st</sup> July 2025 the petitioner acknowledges that the respondent has only made payment to the tune of Kshs. 2,600,000/= and emphasizes that she is entitled to interest on the sum of Kshs. 3,000,000/= that was initially owed.
3. Through a Replying Affidavit sworn on 14<sup>th</sup> March 2025, and a Further Replying Affidavit sworn on 22<sup>nd</sup> July 2025, both by **Peter Waweru**, the respondent's Legal Officer, the respondent disputes liability for the sums claimed by the petitioner. They maintain that they have already discharged their statutory obligation by settling Kshs. 3,000,000/= and maintain that any additional sums, if due, should be pursued against their insurer. The respondent further emphasizes that they are solvent, with assets exceeding their liabilities, and contends that the present Petition

constitutes a harsh and disproportionate measure amounting to corporate execution.

## **Analysis and Determination**

4. By way of a preliminary observation, and with reference to this Court's Ruling delivered on 18<sup>th</sup> February 2025, it is important to recall that the Court expressly emphasized the necessity of serving the Petition upon the Commissioner of Insurance prior to the hearing. In that Ruling, the Court directed that:

***“Given the necessity of the Commissioner of Insurance’s involvement in these proceedings, the pleadings shall be served upon the Commissioner forthwith, so as to [allow] sic 30 days for the Commissioner’s input to the proceedings.”***

5. It is, however, noteworthy that no evidence has been placed before this Court to demonstrate that such service was effected. Consequently, the Commissioner of Insurance did not file any

documents or submissions as contemplated under **Section 121 of the Insurance Act**. This omission is a grave lapse. Even so, mindful of the need to bring closure and finality to these proceedings, and in the interest of avoiding undue delay, I shall proceed to determine the petition on the basis of the material presently before the Court.

6. Under **Section 384 of the Insolvency Act**, a company is considered unable to pay its debts in three situations: when it fails to comply with a statutory demand of at least one hundred thousand shillings within twenty-one days; when a creditor's judgment or court order cannot be satisfied through execution; or when the court is otherwise satisfied that the company cannot meet its debts as they fall due. It is clear that the law does not restrict insolvency strictly to these procedural triggers. The court is given wide latitude to determine inability to pay debts on the basis of the company's general financial position.
7. While there is evidence that the respondent had indeed challenged the validity of the statutory demand through an application dated 23<sup>rd</sup> October

2023, it is important to note that the challenge was purely procedural. The respondent's preliminary objection was dismissed, and the Court did not consider the statutory notice on its merits, since no substantive question was before it regarding the notice.

8. That point is indeed crucial. It highlights that the test for the success of a liquidation petition is not confined to whether a statutory demand has been set aside or not. The dismissal of the respondent's preliminary objection meant that the statutory demand was never substantively interrogated, and therefore its validity was not conclusively determined.
9. More importantly, the Insolvency Act makes clear that the Court's discretion is much wider. Apart from **Section 384**, **Section 424(1)(g)** further empowers the Court to order liquidation if it considers it just and equitable to do so. This means that even if a statutory demand were successfully set aside, that alone would not automatically defeat a liquidation petition. The Court may still

proceed to consider other evidence of insolvency or broader equitable grounds for winding up.

**10.** From the pleadings and submissions, I note that the respondents maintain that they have settled the disputed amounts, whereas the petitioner, on the other hand, argues that there are still pending sums yet to be paid, together with accrued interest. In support of this position, the petitioner has provided an account of cheques issued by the respondent, seeking to establish that certain amounts remain outstanding. During the course of the proceedings, the petitioners acknowledged receipt of some payments and even expressed willingness to pursue an out-of-court settlement to reconcile accounts in order to ascertain the precise sums still pending.

**11.** To my mind, this demonstrates that there are indeed disputed sums which the petitioner continues to lay claim to. It is equally clear that some monies have been paid, and therefore the sums in dispute may be less than what the petitioner initially stated in the petition. In **Re Global Tours and Travels Ltd, (2001) 1 E.A.**

**195**, the court held that where the debt in question is disputed, the petitioner lacks the locus standi to present a winding-up petition. Similarly, in **Mann v Goldstein, (1968) 2 ALL ER 769, 775**, Ungood-Thomas J observed that the winding-up jurisdiction is not intended to resolve disputed debts. Unless a creditor has established as such, he is not entitled to present a petition, and where a debt is disputed on substantial grounds, the court should restrain the petition as an abuse of process, even if the company appears insolvent.

- 12.** This principle was reaffirmed by the Court of Appeal in **Universal Hardware Limited V African Safari Club Limited, [2013] KECA 507 (KLR)**, where the Court emphasized that a disputed debt on substantial and bona fide grounds cannot form the basis of winding-up proceedings. The Court further cautioned that a creditor's petition should not be entertained if it seeks to enforce a disputed debt against a solvent company, as such proceedings would amount to a scandalous abuse of process and must be struck out.

**13.** As these authorities make clear, the role of this Court, sitting as an insolvency court, is not to determine the precise amount due and owing from the respondent. It does appear to me that the debt is genuinely disputed. Issues around the exact payments made or due and whether the contractual obligations of the respondent company allowed it to shoulder liability beyond that which it has already shouldered must be resolved before a civil court, before this Court can substantially deal with the petition.

### **Disposition**

**14.** Flowing from the above, it is my considered view that the liquidation petition dated 7<sup>th</sup> August 2023 is without merit. It is dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED IN NAIROBI  
THIS 20<sup>TH</sup> DAY OF FEBRUARY 2026.**

**F. MUGAMBI  
JUDGE**

**Delivered in presence of:**

Ms Mwendwa HB for Mr Kamwaro for the petitioner

Mr Mwangi for the respondent  
Court Assistant: Lillian

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