



**Equity Bank (Kenya) Limited v Neptune Credit Management Ltd (Civil Suit 871 of 2009)  
[2026] KEHC 3010 (KLR) (Commercial and Tax) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 3010 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 871 OF 2009  
MA OTIENO, J  
FEBRUARY 26, 2026**

**BETWEEN**

**EQUITY BANK (KENYA) LIMITED ..... PLAINTIFF**

**AND**

**NEPTUNE CREDIT MANAGEMENT LTD ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed an amended plaint dated 8/8/2016 against the Defendant seeking to restrain the Defendant from instituting or advertising winding-up proceedings based on a disputed claim of Kshs 10,200,000.
2. It was stated that the Defendant had served a notice of intention to commence winding-up proceedings in respect of the alleged debt. The Plaintiff contended that both liability and quantum were bona fide disputed and that the Defendant had no lawful entitlement to the sums claimed.
3. The Plaintiff averred that the winding-up notice had been issued maliciously and in bad faith, and was intended to harass and coerce payment of a contested claim, contrary to the principle that insolvency proceedings cannot be used as a debt recovery mechanism where a genuine dispute exists.
4. The Plaintiff contended that it was a substantial and financially sound banking institution with extensive assets, millions of customer accounts, and significant profitability, and was fully capable of satisfying any lawful decree. It maintained that there was therefore no reasonable apprehension of insolvency.
5. It was asserted that the filing or advertisement of a winding-up petition would cause irreparable harm, disrupt its operations, damage its reputation, and adversely affect its shareholders, employees, and customers across the region.



6. The Plaintiff further expressed willingness, if required, to furnish a bank guarantee to secure the disputed sum. It contended that the Defendant's actions were unlawful, in bad faith, and had occasioned loss and damage. It also averred that no other proceedings were pending between the parties on the same subject matter, save for an earlier winding-up cause which had been dismissed.
7. Accordingly, the Plaintiff sought permanent injunctions restraining the Defendant from presenting, advertising, or pursuing any winding-up proceedings in respect of the said claim or any other claim, together with general damages, interest, costs, and such further relief as the court deemed fit.
8. In support of its case, the Plaintiff called one witness during the hearing. PW1 was Joe Mulumi Musyoka, the Credit Manager of the Plaintiff, who adopted his witness statement dated 2/6/2019 as his evidence in chief.
9. PW1 stated that the Plaintiff had advanced various loan facilities to Capital Construction Company Limited, secured by charges over several properties, including properties in Parklands (L.R. No. 209/30/10) and along Mombasa Road (L.R. No. 209/10568). Upon default and after earlier realization of other securities, the Plaintiff agreed with the borrower to dispose of the two properties by private treaty. The Parklands property was sold for Kshs 28 million and the Mombasa Road property for Kshs 40 million, and the proceeds were applied towards reduction of the outstanding loan.
10. He testified that on or about 6/4/2009, the Plaintiff engaged the Defendant through a letter of offer to undertake recovery and collection of certain sums on its behalf for a limited period of sixty days. The Defendant accepted the appointment but made no recoveries during or after the agreed period, and the appointment lapsed by effluxion of time.
11. The witness stated that the Defendant thereafter claimed entitlement to Kshs 70,000,000, including Kshs 10,200,000 allegedly arising from recoveries purportedly effected on the Plaintiff's behalf. It was asserted that the Defendant had no entitlement to the said sum, as the recoveries related to securities realized directly by the Plaintiff and not through the Defendant's efforts. He maintained that the agreement clearly defined the scope and duration of the Defendant's mandate and that the claim was unfounded and intended to pressure the Plaintiff.
12. He further averred that the Defendant instructed advocates and initiated proceedings without the Plaintiff's authority, and subsequently sought to have the Plaintiff settle those legal fees. Upon the Plaintiff disputing liability, the Defendant issued a notice of intention to present a winding-up petition.
13. The witness stated that the Plaintiff was a financially sound and substantial bank with extensive assets, a large customer base, strong profitability, and the ability to satisfy any lawful decree, and that there was no basis for any allegation of insolvency. He contended that the threatened winding-up proceedings were malicious, in bad faith, and intended to embarrass and coerce payment of a disputed debt. He averred that the filing or advertisement of such a petition would cause irreparable harm and serious disruption to the Plaintiff's business and stakeholders.
14. Accordingly, he stated that the Plaintiff sought orders restraining the Defendant from presenting, advertising, or pursuing winding-up proceedings in respect of the disputed claim and prayed that judgment be entered as sought in the amended plaint.

#### **Defendant's case**

15. The Defendant denied the Plaintiff's claim vide its statement of defence dated 16/11/2011.
16. The Defendant's witness, Bryan Yongo, testified as DWI and adopted as his evidence in chief his written statement dated 27/2/2019 in opposition to the claim by the Plaintiff.



17. Mr. Yongo stated that on or about 6/4/2009, the Plaintiff instructed the Defendant to recover and collect Kshs 735,334,152.58 from Capital Construction Company Limited. He averred that the Defendant promptly commenced recovery efforts by issuing a demand and engaging the debtor in meetings and negotiations, and kept the Plaintiff fully apprised of the progress through correspondence. According to him, the debtor acknowledged the demand, held meetings with the Defendant, and proposed repayment arrangements.
18. He stated that the Plaintiff expressly confirmed to the debtor that the Defendant had full authority to handle the recovery process. He further stated that subsequent negotiations, conducted through the Defendant's efforts, culminated in agreements that the proceeds of the Parklands property (Kshs 28 million) and the Mombasa Road property (Kshs 40 million) be credited to the loan account. He contended that the Defendant was the effective cause of those negotiations and recoveries, and that prior to the Defendant's involvement, no payments had been made and negotiations had stalled.
19. The witness further stated that the initial instructions were supplemented by further correspondence and meetings, and that the Defendant continued reporting on progress. He asserted that, as a result of its efforts, the Plaintiff received sums entitling the Defendant to commission calculated at 15%, amounting to Kshs 10,200,000. He maintained that the entitlement arose from a written contract and that the court's role was to enforce, not rewrite, the parties' agreement.
20. He averred that despite numerous demands and fee notes, the Plaintiff refused to settle the Defendant's fees and had deliberately sought to deny the Defendant its commission. He further alleged that the Plaintiff failed to disclose the full extent of its debt portfolio and liabilities, and that the Defendant had been instructed to pursue the entire outstanding sum without exclusion of any recoveries. He contended that the Plaintiff could not benefit from the Defendant's services while evading its contractual obligations.
21. Mr. Yongo denied that the winding-up notice was malicious or intended to harass or embarrass the Plaintiff and maintained that there was no dispute as to the Defendant's entitlement or the quantum claimed.

### **Analysis and determination**

22. The Plaintiff filed written submissions dated 5/8/2025, while the Defendant filed submissions dated 28/8/2025. I have considered the same together with the pleadings and evidence filed by the parties.
23. Having considered the submissions, the Court is of the view that the core issue for determination is: whether the court ought to grant a permanent injunction restraining the Defendant and/or its agents from advertising or filing winding up proceedings against the Plaintiff in respect of the claim of Kshs.10,200,000 and any other claim.
24. A background of this dispute is that the Plaintiff extended loan facilities to Capital Construction Company Limited (the debtor), which were secured by charges over several properties, including L.R. No. 209/30/10 in Parklands and L.R. No. 209/10568 along Mombasa Road.
25. Following the borrower's default, the Plaintiff, through a letter dated 6/4/2009, engaged the Defendant to undertake recovery and collection of Kshs.735,334,152.58 on its behalf for a limited period of sixty days, which appointment the Defendant accepted. The letter also stated that the Defendant was entitled to 15% of the amount actually collected. The letter was produced on page 1 of the Defendant's list and bundle of documents.



26. The instructions issued to the Defendant to pursue recovery were further confirmed by the Plaintiff vide a letter dated 27/4/2009 written to the debtor. See page 6 of the Defendant's bundle.
27. The correspondence that followed indicated that the Defendant held meetings with the debtor in an effort to collect the loan amounts owed. In a letter dated 26/5/2009 and produced on page 7 of the Defendant's bundle, the debtor wrote to the Plaintiff and stated the following:
- “We have held extensive meetings with your agents Neptune Credit Management Ltd and have agreed as follows:
- THAT you credit our loan account with Kshs.28,000,000 towards the sale of Parklands Property
- That the proceeds of the Mombasa Road Property being Kshs.40,000,000/- be credited to the loan account hence substantially reducing the loan account.”
28. There was produced a letter on page 9 of the same bundle whereby the Plaintiff gave further instruction to the Defendant to pursue the monies held by the debtor's directors in an effort to recover the outstanding debt.
29. On pages 10 and 11 were letters stating that one of the properties charged to the Plaintiff had been sold, and a sum of Kshs. 34,000,000 was recovered towards the settlement of the loan.
30. Based on the foregoing, the Defendant asserted that due to its efforts, the Plaintiff was able to recover some money from the debtor, which entitled it to a 15% commission, which amounted to Kshs. 10,200,000.
31. The Plaintiff, on its part, refuted this claim and stated that the Defendant was not entitled to the amount claimed, stating that the amounts it received from the debtor were not received due to the Defendant's efforts and that the amounts were received after the period of instructions had lapsed.
32. The Plaintiff denied both liability and quantum, emphasizing that the amount claimed by the Defendant was bona fide disputed. The Plaintiff stated that the Defendant had served a notice of intention to commence winding-up proceedings in respect of the alleged debt and filed this suit to permanently injunct the Defendant from proceeding with the cause.
33. In the Court of Appeal case of *Universal Hardware Limited v African Safari Club Ltd* [2013] eKLR the court explained the rule in the context of a disputed debt:
- “The principle as I understand it is that a disputed debt on substantial and bona fide grounds cannot be the subject of a winding-up proceedings on account of the company's inability to pay its debts. The case law and scholarly writings are categorical that a Creditor's petition should not be entertained if it is to enforce a debt that is disputed and the company is solvent, otherwise it will be treated as a scandalous and abuse of the process of the court and will be struck out on that basis.”
34. In *Mulwa & 59 Others v Invesco Assurance Company Limited & Another* [2023] KEHC 21411, the High Court reiterated a similar principle in holding that a petition cannot be founded on a substantially disputed amount:
- “A winding-up petition is a perfectly proper remedy for enforcing payment of a just debt. ... A winding-up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed by the company. A petition presented ostensibly for winding up



in order to exercise pressure will be dismissed and, under circumstances, may be stigmatized as a scandalous abuse of the process of the court.”

35. Upon analyzing the documents on record as discussed hereinabove, it is clear to me that the amount claimed by the Defendant of Kshs. 10,200,000, which is the basis of its intended winding-up cause, is highly disputed. The Plaintiff adamantly asserted that it does not owe the Defendant the said amounts as the same was not earned by the Defendant.
36. It is the view of this Court that the Defendant does have a right to pursue the commission it deems to be due to it from the Plaintiff. However, as pointed out hereinabove, a disputed debt, which is the case in the present case, cannot be the basis for a petition for insolvency proceedings.
37. As to whether the prayers sought in the amended plaint are grantable, the Court refers to the case of Kenya Power & Lighting Co Ltd v Matic General Contractors Ltd [2000] KEHC 479, where the court granted an injunction, pending the determination of the said suit, restraining the Defendant from presenting winding up proceedings as the debt was bona fide disputed. The court held:
- “It is thoroughly settled now that, on a petition to wind up, no order can be made until the debt is proved, where there is a bona fide dispute, as to its existence ... But if a man will present a petition to wind up when he has distinct notice that the debt is disputed, and the circumstances show that it is bona fide disputed, and also when he knows that the company is solvent, ... I can entertain no doubt that the duty of the court ... would be ... to dismiss it ... The action ... was therefore oppressive and should not be allowed to continue.”
38. Similarly, in Flower City Limited v Poly tanks & Containers Kenya Limited [2021] KEHC 34 (KLR), the court explained the principle of restraint and injunctive jurisdiction in the context of threatened winding-up petitions. It held:
- “...unless the court had some power to restrain it, the process could be used as a device to pressurize a company into paying a debt the company genuinely and substantially disputed; or against which the company could deploy a genuine and substantial cross claim.”
39. The Court further stated that:
- “...where an unjustified insolvency proceeding is presented or pursued, it amounts to an abuse of court process ... On a company’s application, the court can issue an order prohibiting ... a would-be petitioner from presenting insolvency proceedings or a winding-up petition, or if the proceedings have already been presented, the petitioner is stopped from taking any further steps in the proceedings.”
40. It is clear from the authorities that the court may restrain a would-be petitioner to prevent abuse of the court process where the debt is genuinely disputed, and the insolvency process would otherwise be misused.
41. Bearing in mind that a bona fide creditor is entitled, pursuant to the statutory insolvency regime under the *Insolvency Act* 2015, to institute liquidation proceedings against a company that is unable to pay its debts, the court does not lightly restrain the exercise of that statutory right where the debt is due, payable, and undisputed.
42. Under the *Companies Act*, a winding-up petition is an inappropriate tool for debt collection if the debt is “substantially disputed”. The evidence shows a sharp disagreement over the timing of the property sales and whether they fell within the Defendant’s mandate.



43. The Plaintiff has produced correspondence suggesting the sales were initiated via private treaty before the Defendant's engagement was finalized. This constitutes a triable issue that must be resolved through a regular civil trial rather than insolvency proceedings.
44. On the effectual cause of recovery, the Defendant claims it settled/compromised the debt, leading to the release of funds. However, the Plaintiff argues the 60-day instruction period lapsed on June 7, 2009, without any actual collection by the Defendant. While the Defendant proved it held meetings with the debtor, the legal burden remains on the Defendant to prove that these meetings, rather than the pre-existing private treaty arrangements, were the primary cause of the payment.
45. An injunction to restrain winding-up proceedings is an equitable remedy. Given that the debt is contested on substantial grounds, allowing the Defendant to proceed with a winding-up notice would be an abuse of the court process and could cause irreparable reputational harm to a financial institution of the Plaintiff's standing.
46. Regarding general damages, the Court notes that the Plaintiff sought compensation for adverse publicity. However, no evidence was adduced in that regard. It is settled law that general damages are typically not recoverable for a simple breach of contract unless specific loss is pleaded and proved.
47. Accordingly, I grant a permanent injunction restraining the Defendant from presenting, advertising, or filing winding-up proceedings against the Plaintiff in respect of the claim for Kshs. 10,200,000.
48. The claim for General Damages is dismissed for lack of sufficient proof of quantified loss.
49. Costs of this suit are awarded to the Plaintiff.
50. It is so ordered.

**SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 26<sup>TH</sup> FEBRUARY 2026**

**ADO MOSES**

**JUDGE**

In the presence of: -

C/A – Moses

.....for the Plaintiff

..... for the Defendant

