



**Re: Epsidon Technology Distribution (Pty) Limited t/a First Distribution
v Netronics Communications Limited (Insolvency Petition E002 of 2023)
[2026] KEHC 2734 (KLR) (Commercial and Tax) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2734 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E002 OF 2023
AA VISRAM, J
FEBRUARY 26, 2026**

BETWEEN

**RE: EPSIDON TECHNOLOGY DISTRIBUTION (PTY) LIMITED T/A FIRST
DISTRIBUTION PETITIONER**

AND

NETRONICS COMMUNICATIONS LIMITED RESPONDENT

RULING

Introduction

1. The Court is called upon to determine the Notice of Motion dated 15th July, 2025, by which the Respondent seeks, inter alia, the setting aside of the judgment delivered on 10th July, 2025, a stay of execution, and reinstatement of the petition for hearing.
2. The Application is supported by the affidavit of Isaac Opondo sworn on 15th July, 2025. It is opposed by the Petitioner through a replying affidavit sworn on 21st August, 2025, and written submissions on record.
3. The gravamen of the Respondent's case is that the judgment was delivered without notice and in breach of its right to a fair hearing. The Petitioner contends that the Respondent was aware of the proceedings, failed to diligently follow court directions, and has never filed any response to the substantive liquidation petition, despite ample opportunity.

Issues for Determination

4. The application turns on the following issues:-



- a. Whether this Court has jurisdiction to set aside its judgment of 10th July, 2025.
- b. Whether the Respondent has demonstrated sufficient cause to warrant the exercise of discretion in its favour.
- c. The relevance of the Respondent's failure to file any reply to the substantive petition.
- d. Where the balance of justice lies.

Jurisdiction

5. There is no dispute that this Court has jurisdiction, both under Order 12, rule 7 of the Civil Procedure Rules and its inherent powers, to set aside or vary its own orders. That discretion, however, is neither automatic nor unbounded. It must be exercised judiciously, on reason, and in the interest of justice.
6. The real question, therefore, is not jurisdiction but whether the circumstances of this case justify its exercise.

Whether Sufficient Cause Has Been Shown

7. The guiding principles on setting aside ex parte judgments are well settled. The discretion is intended to avoid injustice or hardship arising from accident, inadvertence, or excusable mistake. It is not designed to assist a litigant who has deliberately sought, whether by evasion, inaction, or indifference, to delay or obstruct the course of justice. See *Shah v Mbogo & Another* [1967] EA 116.
8. The chronology of this matter is telling. The liquidation petition was filed in January 2023. The Respondent entered appearance through Counsel. The matter was referred to court annexed mediation, culminating in a settlement agreement in August 2024, in which the Respondent acknowledged the debt and undertook to pay. It defaulted.
9. Upon the matter reverting to court, the Respondent was granted indulgence on several occasions. Despite this, and despite being fully aware of the nature and consequences of the proceedings, the Respondent never filed any replying affidavit, grounds of opposition, or other substantive response to the petition. That position remains unchanged to date.
10. This omission is not a mere technicality. In insolvency proceedings, a Respondent seeking to resist liquidation must, at the very least, place before the Court some material demonstrating a bona fide dispute, solvency, or other legally cognisable defence. The Respondent has done none of these things.
11. The application before Court is therefore not accompanied by any draft response, proposed defence, or indication of what the Respondent would urge if the matter were reopened. The Court is being asked to set aside a final liquidation order in a vacuum.

Alleged Breach of the Right to a Fair Hearing

12. The Respondent places heavy reliance on Article 50(1) of *the Constitution*. There is no quarrel with the centrality of the right to be heard. However, that right is not self-executing in the abstract. It must be assessed in light of the conduct of the party invoking it.
13. On 26th June, 2025, parties were informed in open court that the date for highlighting submissions would be communicated through the judiciary e-filing portal. That direction was clear and unambiguous. The Respondent does not deny knowledge of it. Its explanation is that its Advocates stopped checking the portal after 30th June, 2025.



14. That explanation does not amount to sufficient cause. A litigant who is expressly directed to monitor the court's electronic platform cannot later be heard to complain that no further notice was served when it chose, of its own volition, to disengage from the very system, through which the Court conducts its business.
15. This is not a case where a party was ambushed or locked out. It is a case of admitted inattention. Courts exist to do justice, but they do not exist to indemnify indolence. This is consistent with the decision of *Tana and Athi Rivers Development Authority v Jeremiah Kimigho Mwakio & 3 others* [2015] KECA 674 (KLR) where the Court of Appeal held that while mistake of a Counsel is excusable, if it is accompanied a litigant's carelessness and inactivity, then the refusal by the court to exercise discretion in favour of such a party cannot be impugned.
16. More fundamentally, even if the Respondent had been present on 10th July, 2025, it had no substantive response on record. There was nothing preventing the Court from proceeding to determine the petition on the basis of the material before it. The absence of a reply to the petition is a matter entirely within the Respondent's control and cannot be transmuted into a constitutional grievance.

Balance of Justice and Prejudice

17. Insolvency proceedings are not ordinary civil disputes. They engage the interests of creditors, the integrity of commercial dealings, and the orderly resolution of corporate failure. Delay is also a form of prejudice.
18. The Petitioner has been pursuing payment of an undisputed debt for over two years. The Respondent acknowledged the debt in mediation, failed to honour the settlement, and thereafter, failed to place any defence before the Court. To set aside the liquidation order in these circumstances would reward inaction and undermine the finality of the court process.
19. Conversely, any prejudice to the Respondent is self-inflicted. It arises not from denial of a hearing, but from a sustained failure to take the elementary steps required to resist the petition.

Conclusion

20. Taking the totality of the circumstances into account, the Court is not satisfied that the Respondent has demonstrated sufficient cause to warrant the setting aside of the judgment delivered on 10th July, 2025.
21. The discretion of the Court cannot be exercised in favour of a party who has, for over two years, failed to file any reply to the substantive petition and now seeks to reopen final orders without disclosing any arguable response.

Orders

22. Accordingly, the Court makes the following orders:-
 - a. The Notice of Motion dated 15th July, 2025, is hereby dismissed with costs.
 - b. The judgment and liquidation order delivered on 10th July, 2025, shall remain in force.
 - c. Any interim stay orders previously granted are hereby vacated.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 26TH DAY OF FEBRUARY, 2026



ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Godfrey

.....for Petitioner

.....for Respondent

