

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
HCCCOMMIP/E002/2025

WILLIAM NDINYA OMOLLO.....1ST
APPLICANT

PETER OWINO KACHERO.....2ND
APPLICANT

VERSUS

OFFICIAL RECEIVER.....RESPONDENT

JUDGMENT

1. The Petitioners herein **William Omollo Ndinya** and **Peter Owino Kachero**, have filed the instant petition seeking the following orders:

- i. That the Court makes an order for liquidation of Nya Ugenya Express Ltd which had been incorporated on the 30th day of April 2009.
 - ii. Makes other such orders as may be necessary and just in the premises.
2. The Petitioners averred inter alia; that their company namely Nya Ugenya Express Ltd was incorporated on 30th April 2009; that the registered office for the company is P.O. BOX 760 Yala; that the nominal capital for the company is NILL; that the paid-up capital or credited as paid up capital is Nil; that the company does not operate any business as none took off; that the company does not own any property; that the directors of the company have resolved to have the company liquidated; that the Petitioners therefore pray that the orders sought be granted.
3. The Petition is supported by a verifying affidavit of the Petitioners dated 3/12/2025 confirming the correctness of the averments in the petition.
4. The Petitioners further filed a witness statement dated 28/11/2025 by the 1st Petitioner William Ndinya Omollo. In the statement it was averred that the company never carried out any business to date. That the company does not own any property and has no outstanding debts. It was further averred in the statement that the directors held a meeting on 4/11/2025 and resolved to have the company liquidated as per the Directors' minutes dated 4/11/2025.

5. The petition is unopposed.

6. The 1st Petitioner William Ndinya Omollo testified and adopted his witness statement dated 28/11/2025 as well as his list of documents dated 3/12/2025. That he sought for an order that the company be wound up as it has not done any business since incorporation and therefore should be struck out from the register. That he has authority from his co-director Peter Owino Kachero.

7. I have considered the petition and the evidence tendered. I find the issue for determination is whether the petition has merit.

8. The Petition was duly served upon the Respondent who has not filed any response and hence the same technically remains unopposed. It is noted that the application relates to an application by a company seeking for a voluntary liquidation. Under section 424 (1) of the Insolvency Act, a company may be liquidated by the court if-
 - a) the company has by resolution resolved that the company be liquidated by the court.
.....
.....
 - g) that the court is of the opinion that it is just and equitable that the company should be liquidated.

The Petitioners who are the directors of the company have made the requisite declaration after passing a resolution vide a meeting held on 4/11/2025 to have the company liquidated on the grounds that the company did not get into operation and has been dormant all along and is not indebted to anyone and hence the need to wind it up.

9. It is noted that the provisions of section 424 (1) of the Insolvency Act provides that there must be a special resolution of the company through its directors. I have perused the resolutions of the company dated 4/11/2025 held at Ugunja House in Siaya County and note that the main agenda was one namely the winding up of the company. The directors also resolved other issues such as existence of the company, handling of assets and liabilities and legal fees. Indeed, the directors resolved eventually to have the company wound up. Hence, I find that the directors have advanced sufficient reasons to warrant the winding up of the company. The company upon incorporation on 30/4/2009 appears to have not carried on business and has remained a shell throughout. The directors now do not see any need to continue sustaining it in the register of companies. Pursuant to the provisions of 424 (1) of the Insolvency Act, it provides as follows:

a) a company may be liquidated by the court if-

b) the company has by resolution resolved that the company be liquidated by the court.

.....

.....

g) that the court is of the opinion that it is just and equitable that the company should be liquidated.

10. Being guided by the foregoing provisions and by the evidence presented in support of the petition, I find that sufficient reasons have been presented to warrant an order for winding up of the company. It is instructive that the company has been in the register from 30/4/2009 to date and that no progress has been made. As the company has not carried out any activities, I have no reason to doubt the Petitioners in their explanation. Further, the Respondent was duly served with the Petition through newspaper advertisement and who has failed to enter appearance and challenge the Petition. Hence the petition remains unchallenged. The company seems to be a shell. I find there is no need to continue sustaining it and that it should be struck off from the register of companies.

11. In the result, it is my finding that the Petitioners' Petition dated 3/12/2025 has merit. The same is allowed as prayed.

Dated and delivered at Siaya this 19th day of March 2026.

D. KEMEI

JUDGE

In the presence of:

Athunga.....for Petitioners

N/A.....Respondent

Maurine.....Court Assistant

SIAYA HCCOMMIP/E002/2025 - JUDGMENT