

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**INSOLVENCY CAUSE NO. E056 OF 2025**

**IN THE MATTER OF THE INSOLVENCY ACT, 2015**  
**RE: DR JANARDAN D PATEL**

**DR. JANARDAN D PATEL.....**  
**APPLICANT**

**VERSUS**

**BINDI SHAH.....**  
**RESPONDENT**

**RULING**

1. This ruling addresses the Applicant’s Notice of Motion dated 2<sup>nd</sup> May 2025, brought under Sections 1A, 1B, 3A, and 63(e) of the Civil Procedure Act, Sections 17 and 692 of the Insolvency Act No. 18 of 2015, and Regulations 16, 17, 77, and 78 of the Insolvency Regulations, 2016. The Applicant primarily seeks an injunction to stop the Respondent from filing a liquidation petition or starting insolvency proceedings based on the Statutory Demand dated 16<sup>th</sup> April 2025. He also wants the Court to set aside this Statutory Demand.
  
2. The application is backed by an affidavit from Dr. Janardan D. Patel. He states that a judgment against him was made on 4<sup>th</sup> March 2019 in HCCC No. 492 of 2003, amounting to

Kshs. 21,535,459/=. He filed Civil Appeal No. E283 of 2021, which is still pending. He claims that while a conditional stay of execution was granted upon payment of Kshs. 5,000,000/= and the provision of a title deed as security, full compliance was hindered by financial struggles during the Covid-19 pandemic and mistakes made by his previous lawyers. He argues that the Statutory Demand dated 16<sup>th</sup> April 2025, claiming Kshs. 38,420,311.90, is inconsistent and premature because it was issued despite the pending appeal. He asserts that insolvency proceedings would make the appeal pointless and cause him irreparable harm.

3. The Respondent opposes the application through Grounds of Opposition dated 19<sup>th</sup> May 2025. He argues that the debt comes from a valid and ongoing judgment, that there is no stay of execution in place, that the amount requested is correctly calculated, and that the Applicant has not shown any genuine dispute to justify interfering with the Statutory Demand..
4. Both sides submitted written statements that the Court has carefully considered.

### **Analysis and determination**

5. The main issue is whether the Applicant has shown enough grounds to justify setting aside the Statutory Demand dated 16<sup>th</sup> April 2025 and stopping the related insolvency proceedings.

6. The legal position is settled. When a debtor fails to meet a statutory demand within the required timeframe, they are considered unable to pay their debts and can face insolvency proceedings. However, **Regulation 17(6)** of the **Insolvency Regulations, 2016** outlines when a court can set aside such a demand:

- a. The debtor appears to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the debt specified in the statutory demand;*
- b. The debt is disputed on grounds which appear to the court to be substantial;*
- c. It appears that the creditor holds some security in relation to the debt claimed by the demand, and either rule 10.1(9) is not complied with in relation to it, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt;*

7. The legal precedent on whether or not a statutory demand should be set aside is well established. Insolvency proceedings should not be used to collect debts that are genuinely disputed. In the case of **Re a Company (No. 0012209 of 1991) [1992] 1 WLR 351**, the court decided that if a debt is genuinely disputed on substantial grounds, a winding-up petition will not hold. This principle has also been affirmed locally in **Universal Hardware Ltd v African**

**Safari Club Ltd [2013] eKLR**, where the Court stressed that insolvency proceedings do not replace standard execution processes for disputed debts.

8. However, a different situation arises when the debt is based on a final judgment from a competent court. A judgment debt is generally due and payable unless stayed, set aside, or altered. It is well established that a winding-up or insolvency process based on a judgment debt cannot be paused simply because an appeal is ongoing, unless a stay order is in place.
9. In this case, it is undisputed that judgment was entered against the Applicant in *HCCC No. 492 of 2003* for Kshs. 21,535,459/=. It is also undisputed that while an appeal was filed, there is currently no stay order in effect. Order 42 Rule 6(1) of the Civil Procedure Rules states clearly that an appeal does not automatically act as a stay of execution. Therefore, the decretal sum remains legally due and enforceable.
10. The Applicant claims that the amount in the Statutory Demand, Kshs. 38,420,311.90, is inconsistent and inflated. However, the decretal sum includes interest and costs, and the Applicant has not provided any convincing calculation to prove that the amount demanded is clearly erroneous. A mere claim of inconsistency, without supporting evidence, does not equate to a substantial dispute as defined by Regulation 17(6).
11. The additional argument that insolvency proceedings would make the pending appeal pointless cannot, on its own,

undermine the Respondent's right to enforce a valid judgment. A successful party is entitled to the benefits of their judgment, and this entitlement cannot be withheld without sufficient and lawful justification.

12. The Applicant bears the responsibility to show a genuine and reasonable case for setting aside the statutory demand. A court will act where there is a credible dispute regarding the existence or amount of the debt. No such significant dispute has been proven in this matter.
13. This Court must also protect against the improper use of its equitable authority under Sections 1A, 1B, and 3A of the Civil Procedure Act. These provisions cannot be used to undermine clear statutory rights under the Insolvency Act, especially when the debt arises from an unsatisfied judgment.
14. After carefully reviewing the arguments presented, it is clear that the Applicant is trying to delay enforcement through insolvency jurisdiction, rather than addressing issues that belong to the appeals process. This is not the intent of insolvency proceedings. I am convinced that the Statutory Demand dated 16<sup>th</sup> April 2025 is based on a valid and unsatisfied judgment debt. The Applicant has not met the requirements for setting aside a statutory demand according to Regulation 17(6) of the Insolvency Regulations, 2016.

15. Therefore, the Notice of Motion dated 2<sup>nd</sup> May 2025 lacks merit and is dismissed, with costs awarded to the Respondent.

**RULING** delivered virtually, dated and signed at **NAIROBI**

This **12<sup>th</sup>** day of **March** 2026.

**P.M. MULWA**  
**JUDGE**

**In the presence of:**

*Mr. Museve* for Applicant

*Mr. Kamau* for Respondent

Court Assistant: *Carlos*