



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
MISC APPLN NO. E894 OF 2025

BETWEEN

THE STANDARD GROUP PLC
APPLICANT

VERSUS

ROBERT KIPROP TOROITICH
RESPONDENT

RULING

Background and Introduction

1. This Ruling determines the application dated 4th September 2025 in which the Applicant company seeks leave to challenge a statutory demand notwithstanding the expiry of the statutory period of 21 days. The Applicant further urges this Court to set aside and vacate the statutory demand issued by the Respondent, for payment of Ksh. 9,063,316.30, arising from salary arrears and outstanding gratuity allegedly due under an employer-employee relationship.

- 2.** The Applicant maintains that the alleged debt of Ksh. 9,063,316.30 is contested and does not meet the threshold of being due and payable, that it requires further investigation, and that it has been raised merely to vex and embarrass the Applicant. The Applicant contends that the delay in bringing the application was occasioned by internal constraints following resignations in its Human Resource and Finance departments, which hindered the timely tracing of the Respondent's files and claim.
- 3.** According to the Applicant, the Respondent voluntarily resigned from employment on 5th February 2025, and although the resignation was accepted under protest due to non-compliance with the contractual requirement of three months' notice, the Applicant informed the Respondent that his terminal dues would only be tabulated and remitted upon completion of clearance and submission of a comprehensive handover report. While the Respondent processed his clearance form on 27th February 2025, he has yet to furnish

the handover report, and the Applicant is still in the process of tabulating and remitting his dues.

- 4.** The Applicant further asserts that the Respondent owes three months' salary in lieu of notice, together with an additional sum of Ksh. 100,000/=, and that any salary arrears remain subject to statutory deductions before payment. The Applicant also argues that the Respondent's claim is time-barred under **section 90** of the Employment Act, as any arrears or gratuity outside the statutory limitation period are defeated by laches. It emphasizes that disputes arising from employment relationships fall within the jurisdiction of the Employment and Labour Relations Court, and that no decree has been issued in respect of the alleged debt. The Applicant insists that it is solvent and capable of meeting its debts, but that the statutory demand is being misused to exert unjustified pressure. The Applicant further submits that it stands to suffer irreparable loss should the statutory demand be enforced and not set aside.

5. The Applicant emphasizes that the delay in filing the present application was neither inordinate nor intentional, but rather excusable in the broader interests of justice, having been occasioned by internal restructuring.
6. Finally, the Applicant invokes the inherent jurisdiction of this Court, guided by the holding in **DAC Aviation (EA) Limited V Stevenson Kibara Ndung'u & 8 Others**, to strike out statutory demands that are unfounded and amount to abuse of process, noting that the principles under **Regulation 17 of the Insolvency Regulations** are equally applicable in the present circumstances.
7. The application is opposed through a Replying Affidavit sworn by the Respondent on 18th September 2025. He avers that he issued a demand letter on 6th June 2025, which the Applicant ignored, and thereafter filed the statutory demand dated 23rd June 2025 in **Milimani IN No. HCCOMMIN/E111/2024**, and duly served it on 24th June 2025. The Applicant failed to comply or challenge the demand within

the statutory 21 days, and is therefore guilty of laches in seeking to contest it seventy-two days later.

- 8.** The Respondent maintains that the debt is undisputed, and that it consists of salary arrears and gratuity payments, accrued since 2016. The Respondent also maintains that the Applicant has repeatedly acknowledged the debt, including in an email dated 14th May 2025, a computation of dues, and a letter dated 8th November 2023. He further contends that he voluntarily resigned in accordance with his contract, completed all clearance procedures, submitted a handover report, and was issued with a Certificate of Service. He disputes the Applicant's claim of incomplete clearance or outstanding obligations, noting that the final computation already deducted the three months' salary in lieu of notice and the alleged Kshs. 100,000/=.
- 9.** The Respondent maintains that the statutory demand meets the threshold under **section 384(1)(a) of the Insolvency Act**, that the

Applicant's reliance on **section 90 of the Employment Act** is misplaced.

Analysis and Determination

- 10.** I have equally considered the written submissions filed by both parties. From the pleadings and arguments advanced, two principal issues arise for determination. The first is whether the Applicant has established a sufficient basis for this Court to exercise its discretion and grant leave to respond to the statutory demand out of time. The second is whether the statutory demand dated 23rd June 2025 ought to be set aside.
- 11.** The Insolvency Regulations, 2016, particularly **Regulations 16 and 17**, stipulate that a debtor may apply to the Court for an order to set aside a statutory demand within 21 days from the date of service of such demand. While the Court retains wide and discretionary powers to enlarge time, jurisprudence is settled that such discretion is not to be exercised lightly. A party seeking to benefit from the Court's indulgence must demonstrate cogent and satisfactory reasons for the delay, and must show that the delay is neither inordinate nor

prejudicial to the opposing party. (See **Nicholas Kiptoo Arap Korir Salat V The Independent Electoral and Boundaries Commission & 7 Others, [2014] eKLR**).

- 12.** In the present case, the record shows that the Respondent issued a demand letter to the Applicant dated 6th June 2025, followed by the statutory demand dated 23rd June 2025. The Applicant therefore had until 14th July 2025 to respond. The application now before Court was filed almost two months after the lapse of the statutory period. The Applicant attributes the delay to internal constraints occasioned by resignations within its Human Resource and Finance departments, which allegedly led to difficulties in tracing the Respondent's files and claim.
- 13.** It was incumbent upon the Applicant to corroborate these averments with credible evidence. No proof has been tendered to demonstrate that the alleged resignations materially impaired the Applicant's ability to respond to the statutory demand within time or that there were in fact, such resignations in the first place. In the absence of such evidence, I find the explanation unsatisfactory and

speculative. Accordingly, I hold that the Applicant has failed to establish a proper basis for enlargement of time, and is therefore not entitled to respond to the statutory demand out of time.

14. Ordinarily, the finding on the issue of delay would suffice to dispose of the matter. However, for the sake of completeness and finality, I shall proceed to consider the other issues raised by the Applicant in opposition to the statutory demand. On the question of jurisdiction, **section 2 of the Insolvency Act** defines “Court” for purposes of the Act as *the High Court, and where there exists an insolvency division of that Court, means that division*. It therefore follows, as a matter of law, that this Court is duly vested with the authority to entertain and determine matters relating to statutory demands and corporate insolvency processes.

15. Contrary to the assertion advanced by the Applicant, the claim before this Court is not one of enforcement of an employer-employee contract in the strict sense. Rather, it arises squarely within the framework of insolvency proceedings. While it

is true that the debt claimed emanates from an employment relationship, the statutory demand is not a mechanism for adjudicating employment rights or resolving labour disputes. It is a statutory instrument provided under **section 384 of the Insolvency Act**, designed to compel payment of debts and, where necessary, to trigger insolvency proceedings against a debtor company. The remedy sought is therefore of a commercial insolvency nature, and not one of employment law enforcement.

- 16.** Turning now to the question of whether the debt is genuinely disputed, and whether such dispute would suffice to warrant the setting aside of the statutory demand, I have carefully examined the evidence placed before the Court. The Respondent has exhibited an email dated 14th May 2025 in which the Applicant itself prepared a computation of the sums owed, arriving at a figure of Kshs. 9,063,316.30. This computation expressly accounted for the three months' notice period which the Applicant now seeks to contest. The Applicant cannot approbate and reprobate, having acknowledged the debt in its own correspondence

and computation, it cannot now turn around and deny liability on the same grounds.

17. Further, the record contains a letter dated 8th November 2023 from the Applicant, wherein it unequivocally acknowledged arrears amounting to Kshs. 1,679,353.60. No evidence has been tendered before this Court to demonstrate that these arrears were ever settled. In the absence of proof of payment, the Court must treat the acknowledgment as subsisting and binding upon the Applicant.

18. The jurisprudence is clear that for a statutory demand to be set aside, the debtor must demonstrate a bona fide and substantial dispute as to the debt. The evidence before me points to repeated acknowledgments of indebtedness by the Applicant, coupled with a failure to discharge the amounts admitted. In these circumstances, I am not persuaded that the debt is disputed on grounds sufficient to justify setting aside the statutory demand.

19. The Applicant further contended that the Respondent had not furnished his handover report,

thereby suggesting that clearance was incomplete and that terminal dues could not properly be tabulated. However, this assertion is not borne out by the record. The Respondent produced before this Court, handover notes dated 18th February 2025 together with a Certificate of Service, issued by the Applicant. The same was issued in accordance with **Section 51(1)** of the Employment Act which stipulates that:

“An employer shall issue to an employee a certificate of service upon termination of his employment, unless the employment has continued for a period of less than four consecutive weeks.”

- 20.** From the above provision, the Certificate signifies the completion of clearance and discharge from employment obligations. Its presence in the record strongly corroborates the Respondent’s position that he fulfilled all the obligations attendant to his resignation, including the preparation of a handover report.

Disposition

21. In light of the foregoing, the application dated 4th September 2025 is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 23RD DAY OF MARCH 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Mr Omulo for the respondent
Mr Achieng HB for Mr Ogola for the applicant
Court Assistant: Lillian