

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & TAX DIVISION**

**INSOLVENCY PETITION NO. E025 OF 2024**

**IN THE MATTER OF THE COMPANIES ACT NO. 17 OF 2015**

**AND**

**IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015**

**KTK ADVOCATES.....**

**PETITIONER/CREDITOR**

**VERSUS**

**ASTERISK LIMITED.....**

**RESPONDENT/DEBTOR**

**JUDGMENT**

**Introduction**

1. Before the Court is a Liquidation Petition dated 26th April 2024 brought by the Petitioner, **KTK Advocates**, seeking an order for the liquidation of the Respondent, Asterisk Limited, on the grounds that the company is unable to pay a decretal debt of **Kshs. 620,803/-** together with interest at 14% per annum from 16th May 2022.

2. The Petition is supported by an affidavit sworn by **Donald B. Kipkorir**, sworn on 18<sup>th</sup> March, 2025, and is based on the grounds on the face of the Petition, and supported by the evidence annexed thereto.
3. The uncontested facts, as evidenced by the pleadings, annexed documents, and the Petitioner's submissions, are that the Petitioner rendered legal services to the Respondent, leading to a dispute on fees.
4. The Advocate-Client Bill of Costs in Nairobi HC Misc. Cause No. E455 of 2021 was taxed on 16<sup>th</sup> May 2022 at Kshs. 620,803/- and a Certificate of Taxation issued, followed by an application under section 51(2) of the Advocates Act, culminating in a judgment entered on 15<sup>th</sup> February 2023. The decretal sum remains unpaid.
5. On 18<sup>th</sup> March 2024, the Petitioner served a statutory demand on the Respondent. The Respondent failed to pay, secure, or compound the debt within 21 days. Consequently, the Liquidation Petition was served, including via substituted service in the Standard Newspaper on 25<sup>th</sup> November 2024.
6. The Respondent has neither paid any part of the debt nor sought to set aside the statutory demand.
7. In support of the Petition, the Petitioner filed written submissions dated 8<sup>th</sup> October 2025.
8. As at the time of writing this judgment, the Respondent had not filed any pleadings or submissions in opposition to the petition despite proof of service.

## Analysis and Determination

9. Having considered the pleadings, the evidence, submissions filed by the Petitioner, and the applicable law, the Court finds that the sole issue for determination is whether the Petitioner is entitled to the orders sought.
10. Section 384(1)(a) of the Insolvency Act provides that a company is deemed unable to pay its debts if:

“...a creditor to whom the company is indebted for one hundred thousand shillings or more has served on the company... a written demand requiring the company to pay the debt and the company has for twenty-one days afterwards failed to pay the debt or to secure or compound for it...”
11. Further, Section 424(1)(e) empowers the Court to issue a liquidation order if the company is unable to pay its debts. Under Section 425(1)(b), a creditor is entitled to present a liquidation application.
12. The Court of Appeal in **Pridelnn Hotels & Investments Ltd v Tropicana Hotels Ltd [2018] eKLR** held that non-compliance with a statutory demand entitles a creditor to pursue liquidation, and that liquidation is not a remedy of last resort but a lawful enforcement mechanism.
13. Similarly, in **Re Pasaiba Tourmaline Limited [2024] KEHC 5351 (KLR)**, the Court, in dealing with a substantially similar Petition, held that:

*“11. The applicant further avers that the filing of the petition was motivated by bad faith with the intention of tarnishing the applicant's reputation.*

*12. Under the Insolvency Act, a Creditor (including judgment Creditors such as the Respondent) has the right to initiate insolvency proceedings against a debtor if the debtor is unable to pay its debts. The Act outlines the definition of inability to pay debts, which includes situations where a debtor fails to satisfy a statutory demand for a debt exceeding the prescribed threshold within the specified period or where execution or other process issued on a court judgment in favor of a Creditor is returned unsatisfied in whole or in part.”*

14. In the present case, the Petitioner has demonstrated the existence of a valid decree, a final judgment for **Kshs. 620,803/- plus interest**, which remains unsatisfied, and there is no evidence of stay, variation, or setting aside. The Petitioner has further demonstrated that a statutory demand dated **18th March 2024** was duly served, and that the Respondent has not honoured the same, nor has it taken any steps to set aside the statutory demand.
15. On the evidence presented by the Petitioner, it is clear that even after filing and service of this Petition, the Respondent has made no payment, proposal, or appearance.
16. Under section 384(1)(a), failure to comply with the statutory demand creates a legal presumption of insolvency. The Respondent's silence leaves the Court with no contrary evidence to rebut this statutory presumption.

17. In the premises, the Court is satisfied that the Respondent is unable to pay its debts. Accordingly, the Court allows the Petition and makes the following orders:
- i. Asterisk Limited is hereby declared insolvent and is hereby liquidated under the provisions of Section 424(1)(e) of the Insolvency Act;
  - ii. The Official Receiver (or a person nominated by the Official Receiver) is appointed as the Liquidator of the Respondent's properties.
  - iii. The costs of the Petition are to be paid out of the assets of the Respondent Company on priority.
  - iv. The decretal sum of **Kshs. 620,803/-**, together with interest at **14% per annum from 16th May 2022 until payment in full**, shall rank as a debt payable in the liquidation.
18. It is so decreed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH 2026.**



**HON. JUSTICE M. ADO  
JUDGE**

**In the presence of: -**

*C/A - Moses*

*Simiyu h/b for D. Kipkorir.....for the Plaintiff*

*N/A..... for the Respondent*

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