



**Whitepeak Logistics Limited v Ceven Limited (Insolvency Cause E008 of 2024)  
[2026] KEHC 4120 (KLR) (Commercial and Tax) (19 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4120 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E008 OF 2024**

**MA OTIENO, J**

**MARCH 19, 2026**

**BETWEEN**

**WHITEPEAK LOGISTICS LIMITED ..... PETITIONER**

**AND**

**CEVEN LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petitioner, Whitepeak Logistics Limited, moved this Court by way of a Liquidation Petition dated 22nd February 2024. The Petition seeks a liquidation order against the Respondent, Ceven Limited (hereinafter referred to as “the Company”), on the grounds that the Respondent is unable to pay its debts within the meaning of Section 384 of the *Insolvency Act*, 2015.
2. The Petition is presented pursuant to, among others, section 425 and is supported by the Statement of Facts and the Verifying Affidavit by Nicholas Key Kiama Wanjohi, a director/shareholder of the Petitioner.
3. The record further shows that the Petition was duly filed, served, and pursuant to leave of the Court, advertised in “The Standard Newspaper” on 18th April 2025.
4. Despite service, the Company neither entered appearance nor filed any response, affidavit, or submissions in opposition to the Petition.
5. The Petitioner’s case, according to the affidavit and Statement of Facts by Nicholas Key Kiama Wanjohi, is that the Petition arises from a commercial transaction between the parties in which the Petitioner supplied Information Technology servers and related equipment to the Company in the year 2021.



6. According to the evidence on record, the parties agreed that payment for the supplied equipment and services would be made within thirty (30) days upon completion of delivery.
7. The Petitioner averred, and it is uncontroverted, that it duly supplied and installed the said equipment to the satisfaction of the Company.
8. It is further averred that the Company failed, refused, and/or neglected to settle the outstanding sum, which, as at the date of the Petition, stood at a sum of Kenya Shillings Two Million Nine Hundred and Ninety Thousand (Kshs. 2,990,000/=).
9. Following the default, the Petitioner subsequently issued a statutory demand dated 13th September 2023 requiring payment of the debt, but the Company failed to comply or to apply to set aside the demand within the prescribed period.
10. It is further the Petitioner's case that despite having served a Statutory Demand on the Respondent on 13th September 2023, the Respondent failed to pay the debt, secure it, or move the Court to set aside the demand within the prescribed 21-day period, hence the instant Petition.
11. In support of the Petition, the Petitioner filed submissions dated 23 February 2026, which the Court has duly considered. No submissions were filed on behalf of the Company, despite service.

### **Analysis and Determination**

12. Having carefully considered the Petition, the verifying affidavit, the Statement of Facts, and the submissions on record, I find that the sole issue for determination is whether the Petition herein is merited.
13. The present Petition has been brought under Section 425(1)(b) of the [Insolvency Act](#), 2015, which provides in part that:
  - a. ...;
  - b. a creditor or creditors (including any contingent or prospective creditor or creditors) ...”
14. The instances under which the Court may liquidate a Company are provided for under Section 424(1) of the [Insolvency Act](#), 2015 which provides that –
  - a. the company may be liquidated by the Court if-
    - a. the company has by special resolution resolved that the company be liquidated by the Court;
    - b. being a public company that was registered as such on its original incorporation –
      - i. the company has not been issued with a trading certificate under the [Companies Act](#) (Cap. 486); and
      - ii. more than twelve months has elapsed since it was so registered;



- c. the company does not commence its business within twelve months from its incorporation or suspends its business for a whole year;
  - d. except in the case of a private company limited by shares or by guarantee, the number of members is reduced below two;
  - e. the company is unable to pay its debts;
  - f. at the time at which a moratorium for the company ends under section 645— a voluntary arrangement made under Part IX does not have effect in relation to the company; or
  - g. the Court is of the opinion that it is just and equitable that the company should be liquidated.” (emphasis added).
15. Here, the petitioner is seeking an order for liquidation to be made as against the respondent Company on grounds that the latter is unable to pay its debts.
16. Section 384 of the *Insolvency Act*, 2015 provides the circumstances in which a company may be deemed as being unable to pay its debts in the following words:
- “(1) For the purposes of this Part, a company is unable to pay its debts-
- a. if a creditor (by assignment or otherwise) to whom the company is indebted for hundred thousand shillings or more has served on the company, by leaving it at the company’s registered office, 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 to the reasonable satisfaction of the creditor;
  - b. if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
  - c. if it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due.
2. A company is also unable to pay its debts for the purposes of this Part if it is proved to the satisfaction of the Court that the value of the company’s assets is less than the amount of its liabilities (including its contingent and prospective liabilities).
3. The insolvency regulations may increase or reduce the amount specified in subsection (1)(a).”
17. It is clear from the above legal provisions that the starting point in insolvency proceedings is whether the Petitioner has established the existence of a debt that is due, payable, and not bona fide disputed.
18. The Petitioner’s claim in the present case is for a liquidated sum of Kshs. 2,990,000/= arising from the supply, installation, and configuration of Information Technology servers and related equipment to the Company.



19. The evidentiary material placed before the Court, including the Statement of Facts, demonstrates that the services were rendered pursuant to a contractual arrangement and that the same were duly performed to completion.
20. It is further evident from the record that the Company neither filed a response nor challenged any of the evidence presented. It is settled law that courts have consistently held that uncontroverted affidavit evidence is deemed admitted. In *Shunkur v Rigogo Chonjo Company Limited & 3 others (Being Sued as the Chairman, Treasurer and Secretary of Chepnyaliliet Self Help Group Respectively)* [2023] KECA 917 (KLR), the Court stated that:
- “The Respondents have failed to refute specifically the allegations in the Petitioner’s sworn affidavit in support. Failure to file a Replying Affidavit can only mean that those facts are admitted. Therefore, in the absence of any evidence to the contrary I find that the petitioners are indeed victims of the 2007/2008 post- election violence.”
21. The Petitioner served a statutory demand on 13 September 2023 for a debt exceeding Kshs. 100,000. The Company neither paid, secured, compounded, nor challenged the demand within 21 days. The failure to respond to a creditor’s claim, particularly after service of a statutory demand and advertisement of the Petition, is a strong indicator that the debt is not genuinely disputed.
22. As to whether the threshold for liquidation has been met, the Court is alive to the requirement that the power of the Court to order liquidation under the *Insolvency Act* must be exercised judiciously. In *In Re African Safari Club Ltd* [2006] KEHC 243 (KLR), the court cautioned against misuse of liquidation proceedings to blackmail companies into paying disputed debts, but affirmed their appropriateness where the debt is undisputed, and the company is unable to pay.
23. Similarly, in *In re Ukwala Supermarket (Eldoret) Limited* [2020] KEHC 7332 (KLR), the Court confirmed that once statutory conditions are satisfied, and the Petitioner is entitled to present a petition, the Court may issue a liquidation order unless good cause exists to refuse it.
24. In this case, the Company (Ceven Limited) demonstrated complete indifference to these proceedings, failed to challenge the demand, and provided no evidence of solvency. In these circumstances, liquidation is both appropriate and justified to protect the interests of creditors.
25. Accordingly, the Court finds the Petition merited and allows the same as follows: -
- i. A liquidation order is hereby issued against Ceven Limited.
  - ii. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed as the Liquidator of the Respondent’s properties; and
  - iii. The costs of this Petition are awarded to the Petitioner.
26. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH 2026**

**HON. JUSTICE MOSES ADO**

In the presence of: -

C/A – Moses

N/A for the Parties

