

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMMIP NO. E030 OF 2025
IN THE MATTER OF MATUMBO COMPANY LIMITED

JUDGMENT

1. The petitioner, Mary Wahu Kihara, filed an Insolvency Petition dated 15th May 2025, against MATUMBO COMPANY LIMITED (hereinafter referred to as the company). She averred that the company is indebted to her in the sum of Kshs.6,322,898.00, being the taxed costs awarded in **ELCC No. E25 OF 2022**, whose full particulars are well known to the company.
2. She further averred that she has made several demands for payment of the debt but the company has neglected to satisfy the said debt. She deposed that on 24th April 2025, the company was served with a Statutory Demand dated 15th April 2025 and twenty-one (21) days have since lapsed. It was her contention that the company is insolvent and/or unable to pay its debts.
3. As a result, she prays for the company to be wound up by the Court under the provisions of the Companies Act.

ANALYSIS AND DETERMINATION

4. Having considered the petition and the affidavit in support thereof, the main issue that arises for determination is whether the company should be wound up, as sought by the petitioner herein.

5. The instances under which a company may be liquidated by a Court are provided for under Section 424(1) of the Insolvency Act, 2015, which states as follows-

“A 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 to contradict the Act;***
- 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).

6. The petitioner herein, contends that the company is unable to pay its debt amounting to Kshs.6,322,898.00, being the taxed costs awarded in **ELCC No. E25 of 2022**, despite several demands. In the circumstances, the petitioner contends that it is just and equitable that the said company be wound up.

7. Section 384 of the Insolvency Act, 2015, provides for 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).”*

8. There is evidence that the company was served with a Statutory Demand dated 15th April 2024. The said company has however neither applied to set aside the said Statutory Demand nor settled the debt. The petition was not opposed despite the company having been served with the petition herein. The petitioner filed an affidavit of service sworn on 12th May 2025 to confirm service of the said petition.
9. The petition was subsequently published in the Kenya Gazette vide Gazette Notice No. 17562 contained in Volume CXXVII – No. 245 of 28th November 2025, and an affidavit of service sworn on 6th February 2026, by Mr. Njugi, B. Gachogu, the petitioner’s Advocate herein, was filed.
10. In the absence of any response from the company, there is no evidence of there being a stay of execution of the decree issued, as the petitioner stated that the

company withdrew its application filed at the Court of Appeal, being **Civil Application No. E414 OF 2024**.

11. Bearing in mind the foregoing summation, this Court is satisfied that the petitioner has demonstrated that the company is unable to pay its debts. See the case of **KTK Advocates v Nyambane Coffee Mills Limited** (2025) KEHC 3238 (KLR), where the Court declared a company insolvent for being unable to pay its debts in a petition that was unopposed.
12. Having given due consideration to the petition herein, I make the following final orders-
 - (i) **The Insolvency Petition dated 15th May 2025 is found to be merited. It is hereby allowed as prayed;**
 - (ii) **The Official Receiver (or any other person appointed by him), is hereby appointed as the Liquidator of the company; and**
 - (iii) **Costs of this petition shall be paid out of the assets of the company.**

It is so ordered.

DATED, SIGNED and DELIVERED at KIAMBU on this 17TH day of APRIL 2026. Judgment delivered through Microsoft Teams Online Platform.

**NJOKI MWANGI
JUDGE**

In the presence of:-

Mr. Njugi for the petitioner

No appearance for the company

Ms Julia – Court Assistant.