



REPUBLIC OF KENYA



Tulsi Construction Limited v Universal Engineering Systems Limited (Insolvency Notice E103 of 2025) [2026] KEHC 5995 (KLR) (Commercial and Tax) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY NOTICE E103 OF 2025**

PM MULWA, J

APRIL 30, 2026

BETWEEN

TULSI CONSTRUCTION LIMITED DEBTOR

AND

UNIVERSAL ENGINEERING SYSTEMS LIMITED CREDITOR

RULING

1. This ruling concerns the Applicant's Notice of Motion dated 26th June 2025 seeking principally that the Statutory Demand dated 10th June 2025 be struck out. In the alternative, the Applicant seeks a declaration that the decree forming the basis of the statutory demand has been rescinded, quashed and/or rendered legally unenforceable.
2. The application is supported by the affidavit of Suryakantbhai Bhailalbhai Patel and is premised on the grounds that judgment was entered on 3rd April 2019 in CMCC No. 1384 of 2017 for Kshs. 15,589,948/= in favour of the Respondent. The same was set aside on 6th June 2020 on grounds of irregularity, but subsequently reinstated on appeal by the High Court on 30th November 2023. Following reinstatement, the Respondent extracted a fresh decree claiming Kshs. 31,335,910.57/= . The Applicant challenged that decree before the trial court, which by a ruling delivered on 27th February 2024, quashed it on the basis that it was exaggerated, inconsistent with the judgment, and contrary to Section 4(4) of the *Limitation of Actions Act*.
3. Notwithstanding the foregoing, the Respondent pursued committal proceedings and proceeded to issue the impugned statutory demand dated 10th June 2025.
4. The Applicant contends that the debt is bona fide disputed, the underlying decree having been nullified. The decretal sum as per the judgment was 15,589,948.00, and out of which a sum of Kshs 14,587,852.00 has been paid, leaving a balance of Kshs. 1,002,096.00.



5. Opposing the application, the creditor filed a replying affidavit sworn by Sabiya Sheikh on 14th August 2025. The Respondent avers that it supplied air conditioning systems to the Applicant under contract, which the Applicant breached by failing to pay the agreed sum. This led to CMCC No. 1384 of 2017, in which judgment was entered on 3rd April 2019 for Kshs. 15,589,948.00 plus interest and costs. Although the judgment was set aside in 2020, it was reinstated on appeal on 30th November 2023, and remains valid and enforceable.
6. The Respondent disputes the Applicant's alleged payments, contending that a substantial portion relates to transactions made before the institution of the suit and therefore cannot offset the decretal sum. It maintains that only Kshs. 4,700,000.00 has been proved as paid post-suit, leaving an outstanding balance of Kshs. 10,889,948.00 plus accrued interest. The Respondent further relies on prior correspondence acknowledging the debt and asserts that the Applicant has not demonstrated full settlement of the judgment sum.
7. It also contends that the statutory demand was properly issued under Section 348(1)(a) of the *Insolvency Act* following the Applicant's failure to pay the decretal amount.
8. The parties filed written submissions.

Analysis and determination

9. The main issue for determination is therefore whether the court should set aside the statutory demand.
10. A statutory demand is ordinarily issued where a company is unable to pay its debts. Section 384(1) of the Act outlines the circumstances in which a company is unable to pay its debts as follows:
 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 a 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.
11. Further Regulations 16 and 17 of the *Insolvency Act* 2016 outline the grounds for setting aside a statutory demand, and the procedure to be followed once it has been issued. The provisions state, in part, as follows:
 16. Application to set aside statutory demand
 - (1) The Debtor may, apply to the Court for an order to set aside the statutory demand—
 - a. Within twenty-one days from the date of the service on the Debtor of the statutory demand; or
 - b. if the demand has been advertised in a newspaper, from the date of the advertisement's appearance or its first appearance, whichever is the earlier.



- (2) Subject to any order of the court under regulation 17 (7), time limited for compliance with the statutory demand shall cease to run from the date on which the application is lodged with the court.

Regulation 17 (6) on Hearing of application to set aside statutory demand - the court may grant the application if—

- a. the Debtor appears to have a counterclaim, set-off or cross -demand which equals or exceeds the amount of the debt or debts 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 respect of the debt claimed by the demand, and either paragraph (6) is not complied with in respect of the demand, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
 - d. the court is satisfied, on other grounds, that the demand ought to be set aside.
12. In the present suit, it is not in dispute that the statutory demand herein is founded on a decree which was expressly quashed by a competent court on 27th February 2024. That finding has neither been appealed against nor set aside. It therefore remains binding.
13. In law, a decree that has been quashed is rendered a nullity. It ceases to have legal force and cannot be relied upon as a foundation for enforcement proceedings, let alone insolvency proceedings which carry grave consequences for a company.
14. The Respondent’s argument that the underlying judgment subsists does not salvage the statutory demand. The demand is pegged on a specific decretal sum which has been judicially declared to be irregular and unlawful. A creditor cannot circumvent such a finding by invoking insolvency mechanisms.
15. Further, the dispute as to the quantum allegedly outstanding - whether Kshs. 1,002,096/= as contended by the Applicant or a higher sum as asserted by the Respondent, clearly shows that the amount is disputed.
16. In *Universal Hardware Limited v African Safari Club Limited MSA CA Civil Appeal No. 209 of 2007 [2013] eKLR, Makhandia JA.,* observed that:
- “...a disputed debt on substantial and bona fide grounds cannot be the subject of a winding-up proceeding on account of the company’s inability to pay its debts. The case law and scholarly writings are categorical that a creditor’s petition should not be entertained if it is to enforce a debt that is disputed and the company is solvent, otherwise it will be treated as a scandalous and abuse of the process of the court and will be struck out on that basis.”
17. Insolvency proceedings are not a substitute for ordinary debt recovery. In the present case, the issuance of a statutory demand founded on a quashed decree is, in my view, not only legally untenable but also amounts to an abuse of the court process. It is a clear attempt to exert pressure on the Applicant, notwithstanding prior judicial pronouncements.
18. In the result, I find that the Notice of Motion dated 26th June 2025 is merited.
19. Accordingly, the Statutory Demand dated 10th June 2025 is hereby struck out with costs.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL 2026.

P.M. MULWA

JUDGE

In the presence of:

Mr. Odhiambo h/b for Mr. Odego for Debtor/Aplicant

Mr. L. Ondieki & Mr. M. Muriithi for Creditor/Respondent

Court Assistant: Lispa

