



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Petition for the Liquidation of Cheza Gaming Limited (Insolvency Petition E024 of 2023)  
[2025] KEHC 793 (KLR) (Commercial & Admiralty) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 793 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
INSOLVENCY PETITION E024 OF 2023  
RC RUTTO, J  
JANUARY 31, 2025  
IN THE MATTER OF A PETITION FOR THE  
LIQUIDATION OF CHEZA GAMING LIMITED  
-AND-  
IN THE MATTER OF THE INSOLVENCY ACT CAP 53 LAWS OF KENYA**

**RULING**

1. This petition dated 28<sup>th</sup> April 2023 was filed by Khubi Solutions Limited, a creditor of Cheza Gaming Limited (subject company). It is supported by the grounds on its face and the supporting affidavit of Paresah Shah, a director of the petitioner, sworn on 24<sup>th</sup> April 2023.
2. The facts giving rise to the petition are as follows; Cheza Gaming Limited is a company incorporated under the Companies Act CAP 486 Laws of Kenya. It was registered on 20<sup>th</sup> November 2015 and a certificate number CPR/2015/215XXXX issued. Its registered office is located in Western Heights Karuna Road Sarit Centre Nairobi and P.O. Box 1532 Nairobi. Its email address is info@chezagroup.com while its telephone number is +2547115XXXX. Its nominal capital is Kshs 70,000,000.00 divided into 200,000 ordinary shares of Kshs 100.00 each and 50,000 redeemable shares of Kshs 1000.00.
3. The petitioner contended that the subject company was indebted to it in the sum of USD 371,916.36 together with interest at commercial rates accruing from 30<sup>th</sup> March 2017 until payment in full. A decree for this amount was issued by the court following judgement entered on 8<sup>th</sup> October 2021 (Mativo, J. as he then was) in Nairobi HCCC No 165 of 2019; Khubi Solutions Limited v Cheza Gaming Limited.
4. The petitioner states that it sought to realize the judgment sum by undertaking execution proceedings where it attempted to attach the company's movables but the same was unsuccessful. This was because the petitioner could not identify the company's assets. The petitioner subsequently served the



- company with a statutory demand on 24<sup>th</sup> November 2021. However, the company is yet to make good the sums claimed.
5. As a result of this, the petitioner has lodged this petition seeking that the company be liquidated and an interim liquidator appointed to take over the management of the company and secure its assets since it was apparent that the company was unable to meet its financial obligations. The petitioner thus prayed for the following:
    - a. That the company, Cheza Gaming Limited, be and is hereby declared insolvent and placed under an interim liquidator;
    - b. That the official government liquidator to immediately take over the management of the company;
    - c. That the costs of the petition be granted to the petitioner and be paid out of the assets of the company;
    - d. That such other order be made as this Honorable Court may deem just and expedient in the circumstances.
  6. In response to the Petition, the company through its then director Abraham Oloo Nyabera, filed a replying affidavit sworn on 2<sup>nd</sup> October 2023 in which it opposed the petition but conceded that there was a decree in favor of the petitioner as against it. The grounds for opposing the petition were as follows: the company was incorporated on 16<sup>th</sup> March 2016 with the paramount objective of capitalizing in the gaming and betting sector. It however encountered substantial impediments in terms of securing financial sustenance because of the unfavorable market conditions in the country. It was thus in the process of exploring restructuring options, partnerships and other strategies to resolve its financial woes.
  7. In light of the above, the deponent urged that, liquidating the company would be detriment to its future operations and put the jobs of its employees in jeopardy taking into account the financial challenges facing the country. It thus opined that it was in the interest of justice that it be allowed to explore restructuring options before it's put to perpetual bed. In any event, the company possessed valuable intellectual property that could potentially generate revenue and settle its obligations.
  8. The company also urged this court to consider that its response was aligned with the principles of corporate rescue and rehabilitation under insolvent laws with the aim of saving businesses and protecting the rights of various stakeholders. It prayed that the petition be dismissed.
  9. However, in a complete turn of events, the company, through its current director Anthony Otim, swore a further affidavit on 22<sup>nd</sup> March 2024 urging this court to allow the petition on account of the following: at a meeting of the board of the company held on 20<sup>th</sup> March 2024, to scrutinize its financial performance and deliberate on its prospects, it was resolved that due to the persistent lack of favorable financial performance and the absence of viable restructuring alternatives, it was in the best interest of the company to initiate its liquidation. Consequently, the replying affidavit sworn by its previous director on 2<sup>nd</sup> October 2023 was retracted.
  10. During the hearing of the petition on 11<sup>th</sup> November 2024, counsel for the petitioner urged this court to allow the petition. The company in its submissions dated 4<sup>th</sup> October 2024 summarized the facts giving rise to the petition. It submitted that by dint of the provisions set out in section 384 (1), (2) and (3) of the *Insolvency Act*, the company was eligible for liquidation by this court on account of the grounds set out in section 424 (1) (e) of the Act. It urged this court to allow the petition.



11. I have considered the petition, the affidavits in support as well as the annexures thereto. I have also examined the parties' oral and written submissions and analyzed the law. The petition seeks to liquidate the company in line with the provisions of the Insolvency Act. Section 384(1) and (2) provide 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 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).”

12. At section 424(1) of the Act:

- “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, 2015; 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.”

13. In line with section 425 (1) (b) of the *Insolvency Act*, this petition was filed by a qualified person, that is Khubi Solutions Limited, a creditor of Cheza Gaming Limited. That fact, of being a creditor, was not denied by the company. According to the facts giving rise to the petition, by a judgment of the court entered on 8<sup>th</sup> October 2021 in Nairobi HCCC No 165 of 2019; Khubi Solutions Limited v Cheza Gaming Limited, the petitioner successfully obtained a decree against the company for a liquidated sum of USD 371,916.36 together with interest at commercial rates accruing from 30<sup>th</sup> March 2017 until payment in full.
14. In spite of obtaining the said judgment sum, the company was yet to make good that claim. The petitioner thus served the company with a statutory notice in line section 384(1)(a) of the *Insolvency Act* as a pre-condition precedent to qualify this petition. These facts are not controverted by the company who in fact supports this petition.
15. There is a decree in force that is yet to be satisfied. I am therefore persuaded that the petitioner has established cause for liquidation of the company. In the circumstances, the petitioner is entitled to the relief provided in section 427(1)(c) of the *Insolvency Act*. Accordingly, I make the following orders:
  - a. The company, Cheza Gaming Limited is hereby declared insolvent and placed under an interim liquidator;
  - b. The official government liquidator be and is hereby appointed as the liquidator to immediately take over the management of the company;
  - c. The petitioner shall have the costs of the petition which shall be borne out of the company assets.

Orders accordingly

**RHODA RUTTO**

**JUDGE**

**DELIVERED, DATED AND SIGNED THIS 31<sup>ST</sup> DAY OF JANUARY 2025**

For Appellant:

For Respondent:

Court Assistant:

