



REPUBLIC OF KENYA



Hamilton Harrison & Mathews v Put Sarajevo General Engineering Limited (Insolvency Petition E020 of 2020) [2025] KEHC 4046 (KLR) (Commercial and Tax) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4046 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E020 OF 2020**

F GIKONYO, J

MARCH 27, 2025

BETWEEN

HAMILTON HARRISON & MATHEWS PETITIONER

AND

PUT SARAJEVO GENERAL ENGINEERING LIMITED RESPONDENT

RULING

1. The company has applied for interim reliefs pending the hearing and determination of its motion dated 17th February 2025.
2. Prayers (3) – (5) of the said motion, seek stay of the judgment and liquidation orders issued on 23rd January 2025; an order restraining the respondent/ petitioner and its agents from enforcing the liquidation orders and staying further insolvency proceedings.
3. During the mention of the matter, Mr. Asembo for the applicant urged the court to grant stay because the applicant has a right to seek a review of the judgment. He added that HCCC E017 of 2019, concerning the same debt that is to be liquidated, is alive and coming up for 7th April 2025.
4. On the other hand, Ms. Saina for the respondent submitted that the court cannot stay a liquidation order. She asserted that the court lacks jurisdiction to grant stay as the declaration of insolvency is final and binding unless set aside. She also submitted that the stay would be prejudicial to the other creditors and would not serve the interests of justice, considering the nature and purpose of insolvency proceedings.
5. Contrary to the submissions by Ms. Saina, the Court may, upon proper reason, at any time after an order for liquidation is made, make an order staying the proceedings, either permanently or for a specified period, on such terms as the Court considers appropriate. S. 447 of the *Insolvency Act*.



6. The applicant confirmed that it has not paid the debt herein. Nevertheless, the applicant has applied for review of the liquidation order made herein. And in light of the overall objective of insolvency law which deliberately shifted from the practice of liquidation which was comparable to a ‘Kiss of Death’¹; into rescue culture of viable businesses as a way of guaranteeing repayment of the debt and sustenance of the company as a going concern; there is need for proportioned balance of interests of the parties.
7. Section 1A of the *Civil Procedure Act* carries a call, under the cover of the overriding objective for the court to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes.
8. And, in the interest of justice and to prevent abuse of process, the court may tap from its inherent jurisdiction.
9. The idea of striking proportioned balance is to take a route with the lower risk of injustice.
10. The application is for a review of the court’s judgment and liquidation orders issued on 23rd January 2025. The applicant has a right to seek review the order.
11. In my considered opinion, the lower risk of injustice lies in granting a stay of the liquidation order to give the applicant an opportunity to be heard on its application for review.
12. Therefore, I stay the liquidation order until the next appointed date in respect of the application dated 17th February 2025.
13. Orders accordingly.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 27TH DAY OF MARCH, 2025.

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F. Gikonyo M

Judge

In the presence of: -

1. Ms. Osicho for Official Receiver
2. Ms. Saina for Kiragu for Respondent
3. Ms. Ndirangu for NBK
4. Towett for Frontier Ltd
5. CA - Godfrey

¹ **Jambo Biscuits v. Barclays Bank (2002), Ringera J (as he then was)**

