



**Njehia v Aziz & Associates Advocates (Insolvency Cause  
E007 of 2024) [2025] KEHC 12117 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12117 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
INSOLVENCY CAUSE E007 OF 2024  
F WANGARI, J  
JUNE 30, 2025**

**BETWEEN**

**FRANCIS NJEHIA ..... APPLICANT**

**AND**

**AZIZ & ASSOCIATES ADVOCATES ..... RESPONDENT**

**RULING**

1. The Applicant filed a Statutory Demand dated 05/04/2024. The Applicant sought to be paid Kshs. 2,180,000 plus costs and interest, being the decretal sum awarded in an undisclosed judgment dated 16/10/2023. Failure to which the Applicant would file bankruptcy proceedings against the Respondent.
2. The Respondent filed a Preliminary Objection dated 16/10/2024. It was stated that the Petition offends the provisions of Part III of the *Insolvency Act*, 2015 and does not comply with the Insolvency Regulations therein. It was prayed that the Petition be dismissed with costs.
3. It was directed that the Preliminary Objection be disposed of by way of written submissions. Only the Respondent complied by filing the submissions as directed.

**Analysis**

4. I have considered the Preliminary Objection, the Respondent's submissions, and also perused through the Statutory Demand filed. The issue for determination is;
  - a. Whether the P.O is merited
  - b. Who bears the costs
5. The parameters of consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the court is enjoined to apply in



determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696. At page 700, Law, JA stated: -

“ A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

6. The Applicant is said not to have complied with the mandatory provisions of the Insolvency Act and specifically Regulation 15 of The Insolvency Regulations, 2016 which provides as follows;

Creditor may apply for bankruptcy order in respect of debtor

- (1) For the purposes of section 17 of the Act, the procedure for complying with or setting aside a demand is as provided under regulations 16 and 17.
  - (2) The creditor's application for bankruptcy order shall be in form of a petition in Form 3 set out in the First Schedule and shall be accompanied by the following documents—
    - (a) verifying affidavit which shall be in Form 4 set out in the First Schedule;
    - (b) proof of the debt which shall be in Form 5 set out in the First Schedule; and
    - (c) the application for appointment of trustee which shall be Form 9 of the First schedule.
  - (3) The petition shall be preceded by a statutory demand and shall be in Form 6 set out in the First Schedule.
  - (4) The statutory demand in subregulation (3) shall be endorsed by the Deputy Registrar of the High Court before it is served on the debtor.
  - (5) The statutory demand specified in subregulation (3) shall be served on the debtor at least twenty one days before the filing of the petition. (6) The service of the statutory demand shall be in accordance with the Civil Procedure Rules, 2010.
7. From the above, Regulation 15 (4) is in mandatory provisions that the Statutory Demand shall be endorsed by the Deputy Registrar of the High Court before it is served on the debtor. Upon perusal of the Statutory Demand dated 05/04/2024, the same has not been endorsed by the Deputy Registrar as required by the law. The Statutory Demand ripe for striking out from the court records.
8. Even though the Respondent proceeded to submit on the merits of the Statutory Demand, this court shall not deal with the same at this stage as the court will be making a final determination on the Statutory Demand thus denying the parties herein their right to be heard as provided for under Article 50 (1) of the Constitution of Kenya, which provides as follows;
- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
9. I find that the Preliminary Objection has merits.
10. On costs, the same follows the events. The costs are awarded to the Respondent.



**Determination**

11. In view of the above, I make the following Orders:
- a. The Preliminary Objection dated 16/10/2024 is hereby upheld.
  - b. The Statutory Demand dated 05/04/2024 is hereby struck out.
  - c. Costs to the Respondent

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 30<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of:

Mr. Gichana Advocate for the Applicant

Ms. Karue Advocate h/b for Mr. Chimei Advocate for the Respondent

Ms. Getrude, Court Assistant

