



**Katana v Tarus t/a Tarus & Company Advocates (Commercial Insolvency
E024 of 2024) [2025] KEHC 12304 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
COMMERCIAL INSOLVENCY E024 OF 2024**

F WANGARI, J

JULY 31, 2025

BETWEEN

JACKSON ZIRO KATANA PLAINTIFF

AND

**JOSEPH KIBORUS TARUS T/A TARUS & COMPANY
ADVOCATES DEFENDANT**

RULING

1. The Defendant/Applicant filed an Application to Set Aside Statutory Demand dated 20/11/2024 pursuant to Section 17 (3) (a) of the *Insolvency Act*, 2015 and Rule 16 of the Insolvency and Regulations 2016, and all other enabling provisions of the law. The Applicant seeks for orders that the Statutory Demand dated 06/11/2024 be set aside and that costs of the application be provided for.
2. The application was based on grounds on its face and the Supporting Affidavit dated 28/11/2024. The Applicant stated that he received the Statutory Demand from the Plaintiff/Respondent through WhatsApp. The debt of Kshs. 2,839,546.26/= giving rise to the Statutory Demand arises from the ex-parte Judgment in Mombasa High Court (OS) HCCC No. E068 of 2023, Jackson Ziro Katana v Joseph Kiborus Tarus t/a Tarus & Company Advocates.
3. It is further stated that the Applicant herein has filed an application seeking to set aside the entire judgment in the above mentioned suit. The application is said to be pending in court. That the Statutory Demand is therefore premature and it is in the best interest of justice that the same is set aside. That no prejudice will be suffered by the creditor if the Statutory Notice is set aside.
4. In opposition, the Plaintiff/Respondent filed a Replying Affidavit dated 19/11/2024. It was stated that the Applicant being the Judgment Debtor owes decretal sum of Kshs. 2,720,550/- and costs of Kshs. 118,996.26/-.



5. That upon extracting the Decree for money together with the Certificate of Costs, the Plaintiff/ Respondent made a demand for settlement against the Judgment Debtor who has not disputed the debt or the amounts sought. That subsequently the Plaintiff/Respondent made a demand for settlement of the debt by issuing the Statutory Demand subject to this ruling.
6. The statutory period of 21 days has lapsed from the date of service of the Statutory Demand and the debtor has not made any payment or satisfied the Decree and Certificate of Costs. The debtor appears is unable to settle the debt herein and he has not attempted to demonstrate that he has capacity to settle any portion of the debt. That this has paved the way for the instant to declare him bankrupt.
7. The court directed that the application be canvassed by way of written submissions. However, as at the time of writing this ruling, no submissions had been filed both in the physical file nor in the e-filing platform.

Analysis

8. This court has considered the application, supporting affidavit, annexures and the Replying Affidavit.
 - a. Whether the Statutory Demand should be set aside
 - b. If the answer to (a) above is to the negative, whether the Statutory Demand has merits.
 - c. What orders are for costs
9. The basis of this application is that the Statutory Demand was premature as there is a pending application in Mombasa HCCC (OS) No. E068 of 2023 (supra) seeking to set aside the ex-parte Judgment which is the source of the debt subject to the Statutory Demand.
10. Having heard the application in the above mentioned suit, the pending application has since been determined by this court. The application in HCCC No E068 of 2023 (supra) has been found to be in default of merits, and the same was dismissed with costs, vide the ruling dated 31/07/2025. The Statutory Demand cannot therefore be said to have been filed prematurely. It is properly on record and the prayer to have it set aside fails.
11. On the merits of the Statutory Demand, Regulation 15 of The Insolvency Regulations, 2016 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 sub regulation (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 sub regulation (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.

12. 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 06/11/2024, the same has not been endorsed by the Deputy Registrar as required by the law. The Statutory Demand is ripe for striking out from the court records.
13. On costs, the same follows the events. Both parties having been unsuccessful in their prayers, each party shall bear its own costs.

Determination

14. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
 - a. The Application to Set Aside Statutory Demand dated 20/11/2024 has no merits and is hereby dismissed.
 - b. The Statutory Demand dated 06/11/2024 is hereby struck out.
 - c. Each party to bear its own costs.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 31ST DAY OF JULY, 2025.

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HON. F. WANGARI

JUDGE

In the presence of:

Petitioner present in person

N/A by the Respondent

Ms. Norah, Court Assistant

