



**Hirani Telecommunication Limited v Wiocc Services Kenya Limited (Insolvency Cause E003 of 2024) [2025] KEHC 11707 (KLR) (Commercial and Tax) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11707 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E003 OF 2024**

**MN MWANGI, J**

**JULY 30, 2025**

**IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015**

**AND**

**IN THE MATTER OF THE INSOLVENCY REGULATIONS, 2016**

**AND**

**IN THE MATTER OF THE INSOLVENCY (AMENDMENT) REGULATIONS,**

**2018**

**AND**

**IN THE MATTER OF HIRANI TELECOMMUNICATION LIMITED**

**BETWEEN**

**HIRANI TELECOMMUNICATION LIMITED ..... APPLICANT**

**AND**

**WIOCC SERVICES KENYA LIMITED ..... RESPONDENT**

**RULING**

1. Before me is a Notice of Motion application dated 5<sup>th</sup> February 2024 filed by the applicant pursuant to the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act*, Sections 384(1) & 425 of the *Insolvency Act*, 2015, Regulation 77B of the Insolvency Regulations, 2016 and any other enabling laws of Kenya. The applicant prays for an order that the Statutory Demand dated 11<sup>th</sup> January 2024 be set aside in its entirety.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Mansukulal Devshi Hirani, the applicant's Director. He averred



- that in September 2021, the applicant entered into a business relationship with the respondent for carrier IP Transit services, governed by a Service Order Form dated 24<sup>th</sup> September 2021. He deposed that due to persistent failures by the respondent, the parties herein mutually terminated the said Agreement through a termination order No.TO-MU-C276-001, created on 14<sup>th</sup> July 2022, with an effective termination date of 31<sup>st</sup> March 2022. He further averred that later, the respondent issued a statement of account showing the applicant's outstanding balance as USD 34,915.54.
3. Mr. Hirani stated that the applicant then began reconciling its accounts with the intention of settling the amount, but on 22<sup>nd</sup> January 2024, it was shocked to receive a Statutory Demand dated 11<sup>th</sup> January 2024 from the respondent's Advocates claiming a significantly inflated amount of USD 304,173.96. He contended that the said claim is baseless, malicious, and a coercive tactic to enforce a disputed debt. Mr. Hirani stated that there is a genuine and serious dispute over the debt amount that must be resolved through proper legal channels, thus the Statutory Demand dated 11<sup>th</sup> January 2024 is premature, unfair, and an abuse of the Court process that could irreparably damage the applicant's business and reputation.
  4. In opposition to the application, the respondent filed a replying affidavit sworn on 6<sup>th</sup> March 2024 by Ms Catherine Waiganjo, the respondent's Company Legal Director. She stated that the parties herein entered into a Service Agreement in September 2021 for the provision of IP Transit services. She averred that the respondent fulfilled its obligations, but the applicant failed to make the required payments, and as at 29<sup>th</sup> March 2022, the applicant owed the respondent USD 34,915.54, which remained unpaid despite a formal demand. She stated that the said amount has accrued interest, increasing the debt to USD 79,748.00 as at 30<sup>th</sup> June 2023. She averred that the respondent suspended services due to non-payment, as permitted under the Agreement.
  5. Ms Waiganjo claimed that the applicant's attempt to terminate the contract on grounds of poor service was unfounded and aimed at avoiding payment. She maintained that the respondent met its service obligations and that the termination was for convenience, making the applicant liable for the full contract value. Ms Waiganjo denied having received any formal termination order and asserted that the contract remained in force. She contended that the applicant has neither shown nor demonstrated a genuine dispute or valid legal grounds to set aside the Statutory Demand. She asserted that even if the claimed amount was overstated, the demand remains valid under insolvency law.
  6. The instant application was canvassed by way of written submissions. The applicant's submissions were filed by the law firm of Prof. Albert Mumma & Company Advocates on 6<sup>th</sup> September 2024, while the respondent's submissions were filed on 12<sup>th</sup> August 2024 by the law firm of Mwaniki Gachoka & Company Advocates.
  7. Mr. Agwara, learned Counsel for the applicant submitted that a Statutory Demand made under Section 384(1) of the *Insolvency Act*, 2015 as read with Regulation 77(B) of the Insolvency (Amendment) Regulations, 2018, is a serious legal tool used to test a company's solvency and should not be abused by creditors to exert undue pressure for payment of disputed debts. He relied on the case of Libyan Arab African Investments Company Kenya Limited [2021] eKLR, and submitted that Regulations though primarily applicable to personal bankruptcy, have been applied to company insolvency.
  8. He argued that once a debt is substantially and genuinely disputed as is the case herein, the Statutory Demand should be set aside. He cited the Court of Appeal case of Universal Hardware Limited v African Safari Club Limited [2013] eKLR, and the case of Flower City Limited v Poly tanks & Containers Kenya Limited [2021] KEHC 34 (KLR), and stated that the dispute on the demanded sum



is substantial and made in good faith, and qualifies to set aside the respondent's Statutory Demand. He asserted that the applicant company is solvent.

9. Mr. Muchiri, learned Counsel for the respondent submitted that a Statutory Demand is a legal mechanism to assess a debtor's solvency and may initiate insolvency proceedings if not complied with. Citing Section 384 of the *Insolvency Act*, 2015 and the case of Flower City Limited v Poly tanks & Containers Kenya Limited (supra), he stated that failure to settle a debt of Kshs.100,000/= or more within 21 days deems a company unable to pay its debts. He referred to Regulation 17(6) of the Insolvency Regulations, 2016 and stated that the applicant admitted owing USD 34,915.54 for IP Transit Services but seeks to set aside a Statutory Demand on the basis of an alleged overstatement of the debt owed, which does not meet the legal threshold.
10. Mr. Muchiri also cited the Court of Appeal case of Universal Hardware Limited v African Safari Club Limited [2013] eKLR, and submitted that a bona fide dispute must raise a genuine and substantial issue, and that minor discrepancies or unsupported assertions are not enough. Counsel cited the decision in the matter of Paleah Stores Limited [2021] eKLR, and the case of Peter Munga v African Seed Investment Fund LLC [2017] eKLR, and argued that an overstatement does not invalidate a Statutory Demand unless it causes substantial prejudice, which the applicant has not shown. In submitting that the applicant herein has failed to address the undisputed portion of the debt, Mr. Muchiri referred to the provisions of Section 17(7) of the *Insolvency Act*.

#### **Analysis and Determination.**

11. I have considered the application herein, the affidavit filed in support thereof, the replying affidavit by the respondent and the written submissions by Counsel for the parties. The issue that arises for determination is whether the Statutory Demand dated 11<sup>th</sup> January 2024 should be set aside.
12. Regulation 17(6) of the Insolvency Regulations, 2016 provides for grounds under which the Court may allow an application that seeks orders for setting aside of a Statutory Demand. It states that –  
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.
13. From the foregoing provisions, in considering an application to set aside a statutory demand, Courts have to determine whether the applicant has established either one, or all the grounds set out under Regulation 17(6) of the Insolvency Regulations. In the instant case, the applicant seeks to set aside the respondent's statutory demand dated 11<sup>th</sup> January 2024 on grounds that the debt is disputed. In the case of Universal Hardware Limited v African Safari Club Limited (supra), the Court of Appeal summarized the position regarding striking out of a petition on account of a disputed debt as hereunder-

The principle as I understand is that a disputed debt on substantial and bona fide grounds cannot be the subject of a winding-up proceedings 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.

14. On perusal of the pleadings filed before this Court, it is not disputed that in September 2021, the applicant entered into a business relationship with the respondent for carrier IP Transit services, governed by a Service Order Form dated 24<sup>th</sup> September 2021. The applicant claims that due to persistent failures by the respondent, the parties herein mutually terminated the said Agreement through a termination order No. TO-MU-C276-001, created on 14<sup>th</sup> July 2022, with an effective termination date of 31<sup>st</sup> March 2022. The respondent on the other hand contended that it fulfilled its obligations but the applicant failed to make the required payments and as at 29<sup>th</sup> March 2022, the applicant owed it USD 34,915.54, which sum remained unpaid despite a formal demand. The defendant contended that the said sum has accrued interest, increasing the debt to USD 79,748.00 as at 30<sup>th</sup> June 2023. It asserted that it suspended its services due to non-payment, as permitted under the Agreement, due to non-payment.
15. In the case of Flower City Limited v Poly tanks & Containers Kenya Limited (supra), cited by the parties herein, Mativo J., (as he then was), in disallowing an application similar to the instant one stated as follows-

The rationale for applications of this nature is to enable the debtor to satisfy the court that he genuinely disputes the debt. Simply put, a debtor must demonstrate the existence of a genuine dispute. Though it may not be possible to provide a closed list of the elements of a genuine dispute, the applicant must: -

- i. Show a plausible contention requiring investigation;
- ii. Be bona fide, genuine and real;
- iii. Be in good faith and show a prima facie plausibility;
- iv. Truly exist in fact, and contain a serious question to be tried;
- v. Be something more than mere bluster or mere assertion;
- vi. Be a claim that may have some substance;
- vii. Have a sufficient degree of cogency to be arguable;
- viii. Have objective existence; and
- ix. Have sufficient factual particularity.”

16. The Honourable Judge further stated that –

It is important to point out that once a debtor shows that even one issue has a sufficient degree of cogency to be arguable, a finding of genuine dispute must follow. The meaning of the expression “genuine dispute” connotes a plausible connection requiring investigation, and raises much the same sort of considerations as the serious question to be tried” criterion which arises on an application for an interlocutory injunction.”

17. I note that in as much as the applicant claims that the amount contained in the respondent’s Statutory Demand dated 11<sup>th</sup> January 2024 is significantly inflated, it admits to owing the respondent USD 34,915.54. Further, the applicant in its affidavit in support of the application herein averred that it



was reconciling its accounts with the intention of settling the aforesaid amount when it received the Statutory Demand in issue. It is evident that the applicant has neither alleged nor demonstrated that it has settled the undisputed debt or part of it, and/or submitted a proposal for payment with definite and/or specific timelines within which it intends to pay the said debt. Further, the applicant has not demonstrated that it is solvent and that it has the capabilities of paying its genuine debts as and when they arise.

18. I am of the considered view that a dispute of part of the debt demanded by the respondent herein does not amount to a genuine dispute to warrant issuance of the orders sought by the applicant herein, especially because the undisputed debt exceeds the amount prescribed under Section 384(1)(a) of the [Insolvency Act](#).
19. In the circumstances, I am not persuaded that the applicant has demonstrated to this Court the existence of a genuine dispute of the debt owed to the respondent to warrant being granted the orders sought herein. For that reason, it is my finding that the applicant has not made out a case to warrant being granted an order for the setting aside of the Statutory Demand dated 11<sup>th</sup> January 2024.
20. I find that the application herein is not merited. It is hereby dismissed with costs to the respondent.  
It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 30TH DAY OF JULY, 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Mr. Ochieng h/b for Mr. Charles Agwara for the applicant

Mr. Muchiri h/b for Mr. Munia for the respondent

Ms B. Wokabi – Court Assistant.

