



REPUBLIC OF KENYA



**In re SBM Bank (K) Ltd (Petitioner) (Insolvency Petition E170 of 2019)
[2025] KEHC 12379 (KLR) (Commercial and Tax) (28 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12379 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E170 OF 2019**

**FR OLEL, J
AUGUST 28, 2025**

JUDGMENT

A. Introduction

1. The Petition before the court for determination is the one dated 29th August 2019, filed by the creditor-SBM Bank (K) Ltd. The said Petition is supported by the affidavit dated on the even date, sworn by one Kevin Kimani, its legal officer, who avers that on or about 7th February, 2016, they did advance to the respondent company a term loan of USD 150,000.00, repayable over a period of sixty (60) months. The company had since defaulted in repaying this loan, and as at 17th April 2019, had an outstanding loan balance of USD 117,197.29.
2. Despite several requests and written demands for payment to be made, the same had been neglected, consequent of which the respondent/debtor had failed to regularize their accounts as contractually provided for. It was therefore clear that the respondent company was insolvent and unable to settle the outstanding debt of USD 117,197.29/=. Their petition had merit and prayed that the same be allowed with costs.
3. This application was opposed by the respondent/debtor, through the replying Affidavit of its managing director, Ms Marcellina Mwaura, dated 25th June 2020. She confirmed that they took an overdraft facility with the petitioner bank, which was later, on 7th March 2016, converted into a term loan of USD148,252.10. They continued to repay the same and had reduced the outstanding loan balance to USD117,197.29 as at 17th April 2019. They were thus surprised when, in June 2019, the petitioner bank, through the firm of Messrs Robson Harris & Co Advocates, made a demand of immediate payment of USD 117,197.29, failure of which they threatened to institute liquidation proceedings.
4. They did respond to the said letter by demanding better particulars, which particulars were never supplied, and this forced her to visit the Banks City center branch, where she held discussions with the loan portfolio manager on restructuring the said facility. The manager later emailed her the



requirements they needed to fulfill for the same to be approved, and was thus surprised to be served with this petition, which, in her opinion was premature since the parties were in active negotiations on how to settle the outstanding loan. She thus prayed that the said petition be dismissed with costs.

B. Analysis & Determination

5. I have carefully considered the petition, its Supporting Affidavit, the Respondent's Replying Affidavit, and both sets of submissions filed by their respective parties' counsel. The Only issue that arises for determination is whether the respondent/debtor company should be placed under liquidation and a receiver-manager appointed to handle its affairs.
6. The debt owed herein to the tune of USD 117,197.29 as at 17th April 2019, is not disputed, and no evidence has been placed before the court to show that the respondent/debtor has made good and settled this commercial debt despite being issued with a 21-day demand notice in writing to do so. In response, the debtor avers that they attempted to have the loan restructured but did not succeed. They also took issue with this cause of Action, terming it as premature, as the dispute herein could be sorted out through ordinary litigation (Civil) considering that they were a viable company, able to meet its financial obligations.
7. Part VI of the [Insolvency Act](#) provides for the liquidation of Companies. Specifically, Section 424(1) of the [Insolvency Act](#) sets out the circumstances under which the court may order for liquidation of a company. It provides that:
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](#) (Cap. 486); 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.(2) A company may also be liquidated by the Court on an application made by the Attorney-General under section 425 (6).
8. In this petition, the Petitioner bank has based its petition on the fact that the respondent company is unable to pay its debts. Section 384 (1) of the [Insolvency Act](#) provides that a company will be deemed to be unable to pay its debts when
The circumstances in which a company is unable to pay its debts 384(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).
 3. The insolvency regulations may increase or reduce the amount specified in subsection (1)(a).
9. In these proceedings, the amount owed and the fact of service of the demand letter dated 7th May 2019 from Robson Harris & Co Advocates are not disputed. It was incumbent upon the respondent to place before the court evidence to show that they have settled and/or continue to pay off this debt, but unfortunately, failed to do so. In the alternative, they had an obligation to prove to the satisfaction of the Court that the value of the company's assets is more than the amount of its liabilities (including its contingent and prospective liabilities), but again failed to provide any evidence to that effect.
10. The petitioner, having established that it is a creditor under Section 425(1),(b) of the *Insolvency Act*, and having sent a statutory notice as a pre-condition for presenting this petition under Section 384(1), (a) of the *Insolvency Act*, I do find and hold that they have established grounds for liquidation, hence entitled to the orders sought pursuant to section 427(1) of the *Insolvency Act*. See *Intona Ranch Ltd v O'brien* [1992] KLR 149, *Re Iflix (Kenya) Limited* (2020) eKLR & *Prideinn Hotels & Investments Limited v Tropicana Hotels Ltd* [2018] eKLR.

Disposition

11. The upshot is that the Petition dated 29th August 2019, has merit and is allowed in terms of prayers (a), (b) & (c).
12. It is so ordered.

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 28TH DAY OF AUGUST, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 28TH DAY OF AUGUST, 2025

In the presence of;

.....for Petitioner
for Respondent
Court Assistant

