



Owaga & 42 others v Mastermind Tobacco Kenya Limited; Mastermind Tobacco Kenya Limited (Respondent) (Insolvency Notice 001 of 2022) [2024] KEHC 2273 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2273 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
INSOLVENCY NOTICE 001 OF 2022
RPV WENDOH, J
MARCH 7, 2024**

BETWEEN

ELIZABETH AKINYI OWAGA & 42 OTHERS & 42 OTHERS & 42 OTHERS & 42 OTHERS PETITIONER

AND

MASTERMIND TOBACCO KENYA LIMITED RESPONDENT

AND

MASTERMIND TOBACCO KENYA LIMITED RESPONDENT

RULING

1. The application for determination is dated 22/5/2023. It was filed by Mastermind Tobacco Kenya Limited (the applicant/Respondent). Elizabeth Akinyi Owaga & 42 Others are the respondents/Applicants.
2. The applicant is seeks the following orders:-
 - a. Spent;
 - b. Spent;
 - c. This court be pleased to set aside the Statutory Demand dated 22/3/2022 taken out by the Petitioners/Respondents and all its consequences thereof;
 - d. Costs of this application and all consequent proceedings herein be borne by the Petitioners/Respondents.
3. The application is based on the grounds appearing on its face and it is supported by the affidavit of Geroge Wachira, Legal Counsel for the applicant sworn on even date.



4. Counsel deposed that the respondents served the applicant with a statutory demand one year after filing it demanding a cumulative sum of Kshs. 26,595,000/= from the applicant on account of tobacco supplies that the respondents allegedly made to the applicant; that on 19/5/2023, the applicant completed tracing and reviewing its record of all tobacco supplies from the respondents in the period between 2015 and 2020 and established that the applicant paid the respondents for all the tobacco supplies it received from them.
5. The applicant deposed that it paid in full all the Respondents except for the following persons:-
 - a. Fredrick Masiaga the 38th respondent who did not have records of the purported tobacco supplies.
 - b. Mbeche Johnes the 39th respondent who did not have records of the purported tobacco supplies.
6. The applicant further deposed that the cumulative amount which it settled in full for the tobacco farmers was Kshs. 23,213,434.23/=; that upon perusing the records, the applicant informed Counsel for the respondents vide a letter dated 20/5/2023 of the payments made to the respondents; that the applicant denies owing the respondents any money and the respondents have not adduced any evidence of outstanding payments to take out the instant insolvency proceedings against the applicant under the *Insolvency Act* No. 18 of 2015.
7. Counsel stated that the tobacco supply contract provides that the parties were to solve the issue amicably or refer the dispute to arbitration which has not been the case here; that the respondents are prematurely before this court; that unless the statutory demand dated 18/1/2022 served on 14/2/2023 are set aside, these insolvency proceedings will ruin the applicant's business; that it is fair and just that the orders sought be granted.
8. The application was opposed through a replying affidavit sworn and dated 14/7/2023 by Athanas Mwita Kerario Counsel for the respondents. Counsel deposed that the application is brought in bad faith; that the applicant has never paid the respondents for the tobacco delivered to it for the various periods between 2017 - 2020; that Counsel on behalf of the respondents demanded payment of the outstanding amount of Kshs. 24,909,505/= which amount was acknowledged by the applicant; that the applicant further sent an email on 4/4/2023 asking for the mode of payment and even a proposed a payment plan; that there is no payment which has been made to the firm of Advocates for the respondents in regard to the payment. Counsel urged that the applicant is intent an misleading this court on a non - existent payment of a debt owed to the respondents and is avoiding payment of its debt.
9. Both parties filed their respective written submissions which I have considered.
10. The respondents filed a statutory demand dated 18/1/2022 on 27/10/2022 seeking payment of Kshs. 26,595,000/= together with interest for 5 years at a rate of 14% which amounted to Kshs. 18,617,900/=.
11. The respondents and the applicant annexed the various agreements for the supply of tobacco in their respective affidavits. I have carefully compared, contrasted and carefully perused the various agreements. On the agreements for the tobacco supply, the record confirms as follows:-
 - a. Mwera James Mwera has a contract but not listed as one of the respondents.
12. The following persons do not have contracts on record but the applicant has admitted to paying them:-
 - a. Tufena Aluoch Odhiambo - 6th respondent.



- b. Lucas Onyango Ooko - 14th respondent.
 - c. Benta Akoth Otieno - 15th respondent.
 - d. Samwel Mariba - 29th respondent.
 - e. Gati Tabitha - 34th respondent.
13. Although the applicant denied the contract of Fredrick Masiaga, the contract has been annexed in the respondents' application. However, this court does agree there is no existent record of the contract between the applicant and Mbeche Johnes the 39th respondent.
14. On the alleged payments made, a perusal of the Accounts Payable Transactions shows that the applicant did make payments to the various respondents on different dates. The respondents have not complained that from the alleged payments there are any outstanding balances. The respondents have not succinctly made a tabulation of payments made from the Accounts Payable Transactions document against what they are claiming from the applicant to guide this court. If it is a matter of accounts, the same should have been resolved before moving to this court.
15. In as much as the applicant did first make an admission of the outstanding amounts, there is no obligation they have under the law to make double payments if after going through its records, the applicant finds that it paid the respondents. Although a party has the right to seek legal redress in court, where a contract provides for a particular process to be undertaken for seeking redress, each party has to abide. In this case the individual contracts provided for negotiations before coming to court. It has not been demonstrated whether the Respondents exhausted that channel before moving to this court.
16. In the premise, I find that the application dated 22/5/2023 has merit. It is hereby allowed in terms of prayer C thereof setting aside the statutory demand notice dated 22/3/2022, taken out by the Petitioners / Respondent and all its consequences thereof. Each party to bear their own costs.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 7TH DAY OF MARCH, 2024.

R. WENDOH

JUDGE

Ruling delivered in the presence of;

Mr. Mwita Kerario for the Applicants.

Mr. Kithome for the Respondent.

Emma & Phelix Court Assistants.

