



**Adan Meat Supply Limited v Hotel Rainbow Superhighway Limited
(Insolvency Cause 1 of 2020) [2024] KEHC 8568 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8568 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
INSOLVENCY CAUSE 1 OF 2020
DO CHEPKWONY, J
JULY 15, 2024**

BETWEEN

ADAN MEAT SUPPLY LIMITED CLAIMANT

AND

HOTEL RAINBOW SUPERHIGHWAY LIMITED RESPONDENT

RULING

1. The Claimant has moved the court by way of a Liquidation Petition dated 30th July, 2020 over a debt of Kshs Seven Hundred and Seventeen Thousand Seven Hundred and Eighty (Kshs. 717,780/=) owed by the Respondent, Hotel Rainbow Superhighway Limited.
2. Before delving into the merits of the Petition herein, the Respondent filed a Notice of Preliminary Objection dated 26th June, 2023 in respect to the Petition based on the following grounds:-
 - a. This Petition is legally barred as the alleged debt is contested.
 - b. Upon reconciliation of the invoices issued to the Respondent by the Petitioner, the Respondent endeavoured to pay the amount owed in full Kshs. 409,169 in full.
 - c. This suit is bad in law and an abuse of court process.
3. The court shall start with the consideration of the Notice of Preliminary Objection as it may have the effect of disposing off the whole Insolvency Petition. In the case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors (1969) EA 696 is on definition of ‘Preliminary Objection’ as follows:-

“----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 a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:-

“a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

4. It is trite that that a debt must be proved for the order of liquidation to issue. The Court of Appeal decision in the case of *Universal Hardware Limited –vs- African Safari Club Limited, MSA CA Civil Appeal No. 209 of 2007 [2013]* eKLR, was that:-

“The thread running through these authorities is that in entertaining a petition to wind up a Company on account of non-payment of debts, the court must be satisfied that the debt is not disputed on substantial grounds and is bona fide. If it is, then the winding-up proceedings are not the proper remedy. The substantial dispute must be the kind of dispute that in an ordinary civil case will amount to a bona fide, proper or valid defence and not a mere semblance of a defence. It is not sufficient for a Company to merely say for instance that we dispute the debt. The Company must go further and demonstrate on reasonable grounds why it is disputing the debt.”

5. In this case, the gist of the Preliminary Objection is that the debt amount has been disputed. It is the argument of the Respondent that it has paid and settled the debt it owed the Petitioner in the sum of Kshs. 409,169/=, so that what is still disputed by the Respondent is the balance of Kshs. 308,611/=.

6. It is also trite that the purpose of liquidation of Companies is to show that a Company is unable to pay its debts as and when they are due. The purpose for this is so as not to exert pressure upon Companies to pay their debts as this would amount to abuse of court process. In this regard, the Court of Appeal in the case of *Matic General Contractors Limited –vs- Kenya Power and Lighting Company Limited [2001]* eKLR 3493 had this to state:-

“In the case of in *Re a Company* [1984] 2 Ch 349, it was held that where a Petition against a Company is presented ostensibly for a winding up order, but really for another purpose, such as putting pressure on a Company, the court has an inherent jurisdiction to prevent such an abuse of process, and will do so, without requiring an action to be commenced, by restraining the advertisement of the Petition, and staying all proceedings upon it. I have no doubt in my mind that the Learned Judge was right in placing emphasis

on the Appellant’s motives, which in my view, were completely dishonourable. A winding up order is a draconian order. If wrongly made, the Company has little commercial prospect of reviving itself and recovering its former position. If there is any doubt about the claim that seems to me to require that the Court, should proceed cautiously. Here was a debt which Kenya Power disputed vigorously on substantial grounds and the appellant was threatening Kenya Power with what really amounted to imminent corporation execution. Kenya Power



had no alternative but to approach the Court for redress having regard to the Appellant's intransigence".

7. Relying on the afore cited case, the court finds that since the alleged debt has been disputed on substantive reasons it will be a draconian move to send the Respondent to its death bed at this juncture. This, coupled with the fact that in the course of the proceedings herein, the parties had engaged in negotiation which was almost materialising, and thus the Petitioner should be at liberty to use other remedies available to claim for the balance owed.
8. In the circumstances, the court proceeds to strike out the Liquidation Petition dated 30th July, 2020 filed herein as the debt herein had been disputed on genuine and substantial grounds.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT KIAMBU VIA ELECTRONIC MAIL THIS 15TH DAY OF JULY 2024.

D. O. CHEPKWONY

JUDGE

