



**C.A. Infraestructuras T & I SLU v Kenya Electricity Transmission
Company Limited (KETRACO) (Insolvency Petition E031 of 2024)
[2025] KEHC 17037 (KLR) (Commercial & Admiralty) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
INSOLVENCY PETITION E031 OF 2024**

**AA VISRAM, J
NOVEMBER 20, 2025**

BETWEEN

C.A. INFRAESTRUCTURAS T & I SLU CREDITOR

AND

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED
(KETRACO) DEBTOR**

RULING

1. The Debtor/Applicant has moved the Court by the Motion dated 10th June, 2024, seeking an order compelling the Creditor to furnish security for costs in the sum of Kshs 185,381,873.90/= within fourteen(14) days, failing which the Petition stands dismissed. The Application is opposed.
2. The background is largely uncontested. The debt in issue arises from an arbitral award issued on 30th July, 2019, in favour of Instalaciones Inabensa S.A. The award was recognised and adopted as a judgment of the High Court in Miscellaneous Application No E445 of 2019 Instalaciones Inabensa S.A v KETRACO. The Debtor challenged the award before this Court, the Court of Appeal (Civil Appeal Application No E056 of 2021) and the Supreme Court (Petition No 17 (E024) of 2021). All challenges were dismissed. The decree therefore stands as final, binding and enforceable.
3. By a Deed of Subrogation dated 28th July, 2023, all rights under the decree were assigned to the present Creditor. As at February 2024, the decretal sum stood at EUR 62,670,697.35/= and Kshs 195,311,623.18/=, exclusive of accruing interest. The Creditor issued a statutory demand and thereafter filed the present liquidation petition.
4. The issue for determination is whether this is an appropriate case for an order for security for costs under Order 26, rule 1 of the Civil Procedure Rules. The jurisdiction is discretionary and must be



- exercised judicially and on settled principles as stated in *Shah & others v Manurama Ltd & others* [2003] 1 EA 294 and *Garsu Pasaulis UAB v Systemedia Technologies Ltd* [2022] KEHC 298.
5. The Court must consider all circumstances, including whether the application is being used oppressively to stifle a genuine claim (*Sir Lindsay Parkinson & Co Ltd v Triplan Ltd* [1973] QB 609), adopted locally in *Ignazio Messina & C.P.S.A v Stallion Insurance Co Ltd*, CA No 9 of 2005). A party seeking security must demonstrate a real risk that, if successful, it will be unable to recover costs.
 6. The Applicant's principal ground is that the Creditor is a foreign entity with no known assets in Kenya. However, the Court of Appeal in *Moses Wachira v Niels Bruel & 2 others* [2015] eKLR held that foreign status alone is insufficient. The Applicant bears the burden of showing inability to pay costs or a lack of bona fides. No such evidence has been provided. The Creditor has averred that it is a financially sound international energy company. That evidence stands uncontroverted.
 7. Critically, the Creditor holds within this jurisdiction a substantial, final and quantified decretal sum exceeding EUR 69 Million and Kshs 195 Million as at the material period. That decretal sum is an enforceable financial asset. Should the Debtor succeed at the hearing of the petition and be awarded costs, the same can be offset against the decretal sum. A party holding a decree of that magnitude within the jurisdiction cannot be described as a litigant unlikely to meet an order for costs.
 8. The Applicant's position is further weakened by the fact that it is the defaulting Judgment-Debtor. It has not shown any arguable defence to the debt or to the petition. Its appellate avenues have been exhausted. The debt is liquidated, final, and has been judicially affirmed. In *KETRACO v Spedag Interfreight Kenya Ltd & 4 others* [2024] KECA 542, the Court of Appeal reiterated that the Applicant is a legal entity distinct from the Government and is fully subject to execution. The attempt to recast a confirmed debt as insecurity for costs lacks merit.
 9. Turning to the quantum sought as security, the figure of Kshs 185,381,873.90/= is without legal foundation. Schedule 6 paragraph 1(f) of the Advocates Remuneration Order 2014 prescribes the instruction fee for presenting or opposing winding-up proceedings at Kshs 25,200/=. The High Court in *L.G. Menezes & Co Advocates v B.N. Kotecha & Sons Ltd*, Misc Cause No 110 of 2019 affirmed that the quantum of debt is irrelevant to the assessment of party-and-party costs in insolvency proceedings. The correct computation for costs is therefore as argued by the Creditor, not the inflated estimate advanced by the Applicant.
 10. On the whole, the application appears to be designed to delay or frustrate the liquidation process and to shield the Debtor from the consequences of its long-outstanding decree. Were the Court to compel a party already holding a substantial decree to deposit further sums as security, while the Debtor continues in default, it would occasion clear injustice and run contrary to the principles articulated in *Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others* [2023] KESC 11 concerning proportionality, access to justice, and the purpose of security for costs, which ought not benefit a party in circumstances arising out of its self-induced impecuniosity.
 11. Based on the reasons set out above, I am satisfied that the application is without of merit. The Creditor has demonstrated a bona fide claim founded on a final decree. The Debtor has failed to show any real risk of prejudice or inability to recover costs, nor has it discharged the burden necessary to justify the invocation of this Court's discretion.

Disposition

12. The Notice of Motion dated 10th June, 2024, is hereby dismissed with costs.
13. Orders accordingly.



DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 20TH DAY OF NOVEMBER, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Lispa

.....for Creditor/Respondent

.....for Debtor/Applicant

