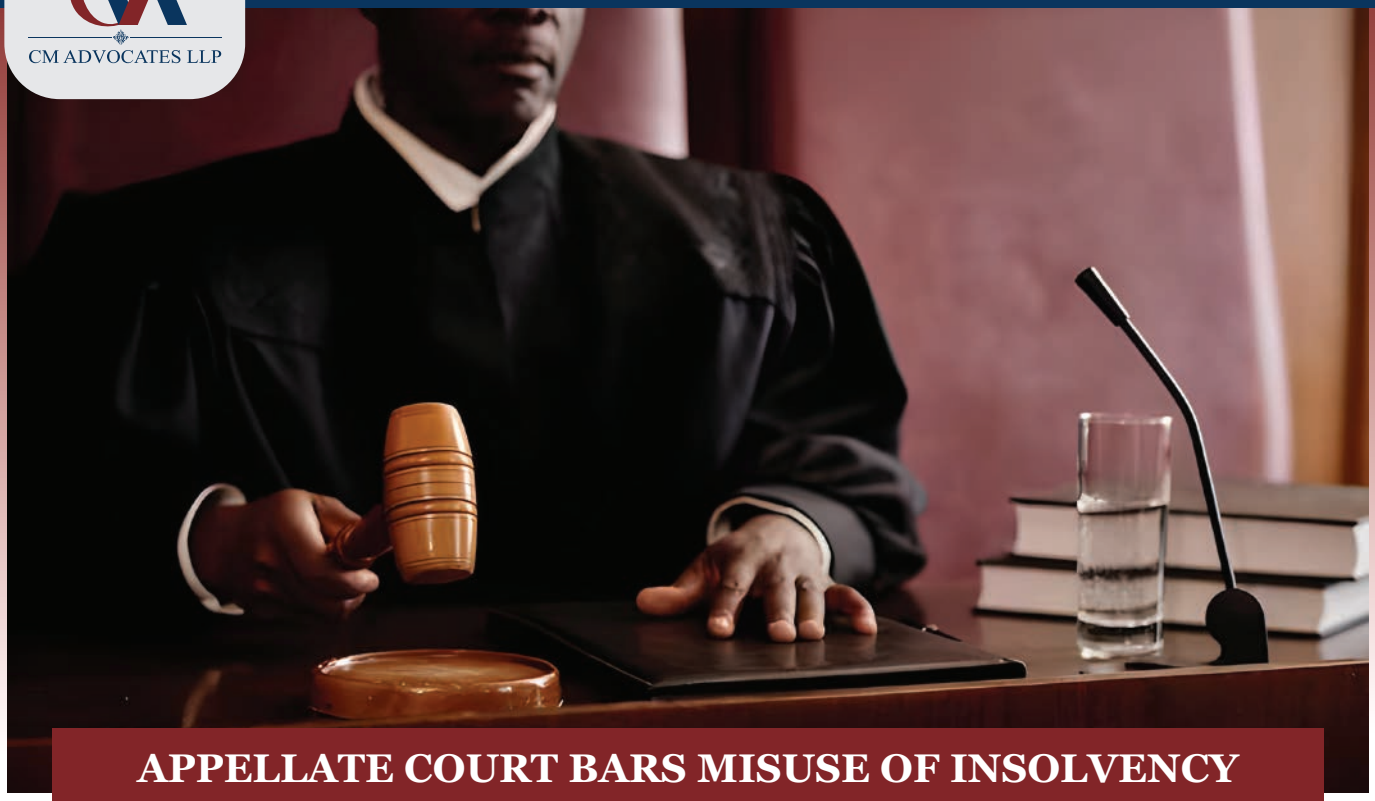


APPELLATE COURT BARS MISUSE OF INSOLVENCY LAWS IN DISPUTED DEBT CASES – A WIN FOR FAIR PROCESS

Landmark Ruling in *Kevian Kenya Limited v Hipora Business East Africa Limited – [2025] KECA 1195 (KLR)*

In a landmark decision with wide implications for creditors, debtors, and insolvency practitioners, the Court of Appeal has held that insolvency proceedings must not be used as a tool to collect disputed debts. The Court allowed the appeal in *Kevian Kenya Limited v Hipora Business East Africa Limited*, reiterating that where a debt is genuinely and substantially disputed, the appropriate forum is a civil court, not an insolvency tribunal.

The case stemmed from a statutory demand issued by Hipora to Kevian for KShs. 2.8 million under Service Level Agreements. Kevian challenged the demand, citing serious accounting discrepancies and an overpayment of KShs. 279,092.65. Despite the High Court's earlier refusal to strike out the liquidation petition, the Appellate Court found:

- The dispute involved complex factual and contractual issues requiring cross-examination and reconciliation of accounts.
- A critical affidavit containing this evidence was overlooked at the High Court—an error in law.
- Allowing the insolvency petition to proceed would have been tantamount to using insolvency law as a coercive debt recovery tool, contrary to its intended purpose.
- The respondent was ultimately burdened with the costs of the appeal and the High Court application, reinforcing that misuse of the insolvency process may result in adverse cost orders.

KEY TAKEAWAY FOR CREDITORS AND INVESTORS

This ruling fortifies Kenya's alignment with international insolvency norms: where a debtor raises a genuine and substantial dispute, the courts must prevent misuse of insolvency proceedings as de facto collection mechanisms. It ensures commercial fairness and protects solvent but contested businesses from premature winding-up.

WHAT TO DO WHEN SERVED WITH A STATUTORY DEMAND

If your company is served with a statutory demand over a disputed debt:

a) Do not ignore the demand – Inaction can lead to adverse consequences including reputational damage and the appointment of a provisional liquidator.
b) Engage legal counsel immediately – Time is of the essence. You may have as little as 21 days to act under Kenyan insolvency law, failing which your company may be presumed unable to pay its debts.
c) File a response supported by documentary evidence – Demonstrate that the debt is genuinely disputed, overpaid, or subject to reconciliation.
d) Apply to set aside the statutory demand under Regulation 17(6) of the Insolvency Regulations, 2016 – Where a substantial dispute, set-off or counterclaim exists.
e) Protect your business continuity – Consider also pursuing alternative dispute resolution or engaging in settlement discussions where appropriate.

CM Advocates LLP can swiftly assess the petition, engage with creditors, and file all necessary applications to protect your business from unjustified insolvency proceedings.

HOW CM ADVOCATES LLP CAN SUPPORT YOU

Our **Debt Recovery, Restructuring and Insolvency (DRRI) Practice Group** works seamlessly across our offices in Nairobi, Mombasa, Diani, Kampala, Kigali, Dar es Salaam, Lusaka, Juba, and Addis Ababa—enabling us to deliver regionally coordinated strategies for debt enforcement, corporate protection, and shareholder litigation.

Whether you are a creditor facing evasive debtors, a business defending against wrongful insolvency actions, or a shareholder confronting internal mismanagement, CM Advocates LLP stands ready to protect your interests with rigour, speed, and discretion.

We are uniquely positioned to help you navigate complex financial disputes with legal precision and commercial pragmatism.

Our services include:

- Advising and defending against coercive statutory demands and winding-up petitions where debts are disputed
- Initiating or challenging insolvency proceedings under the Insolvency Act, 2015
- Negotiating debt restructuring and business rescue plans, including Company Voluntary Arrangements, debt rescheduling, and covenant waivers
- Realizing secured and unsecured assets, including distressed tenant recovery, charged securities, and international asset tracing
- Cross-border recovery and enforcement, including recognition of foreign arbitral awards and judgments under the New York Convention
- Strategic litigation and settlement negotiation, balancing recovery goals with reputational and relationship management

Whether you are a creditor, investor, or corporate debtor, we ensure your interests are safeguarded and your position is legally fortified—locally and across the region.

For professional legal counsel on insolvency, debt restructuring, or recovery strategy, contact:

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