Disputed Logistics Debt Historical Motion to Strike Out Liquidation Petition

Educational sample 312 | Mombasa

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

INSOLVENCY PETITION NO [reference]

[LOGISTICS CREDITOR PETITIONER] v [DEBTOR COMPANY RESPONDENT AND APPLICANT]

NOTICE OF MOTION

1. The Applicant company seeks striking out of the liquidation petition dated [date], on the grounds and through the competent insolvency procedure identified below. The alternative request, if properly supported, is for suitable hearing directions under the Court statutory powers.

2. The Applicant disputes the claimed balance after payments and reconciliation. It identifies the original invoices, the credits actually applied and the specific remaining items said to be disputed on substantial grounds, rather than a bare denial of any liability.

3. All prior statutory-demand decisions, payment or security orders and known appeal or review status are disclosed. The Applicant must identify why the proposed application is not an attempt to overturn a coordinate-court order through a repeated motion.

4. Any genuinely new payment, order or material evidence is described with its date and proper evidential route. The Applicant does not represent the existence of a new case number as permission to relitigate an unchanged ground already determined.

5. The Applicant asks the Court to distinguish the petition hearing from the preliminary strike-out request. If earlier orders preclude the latter route, the company submissions on section 427 remain to be addressed at the proper hearing rather than through hidden collateral challenge.

6. The Applicant requests the lawfully available disposition and appropriate costs. This reconstructs a historical unsuccessful application: the source Court dismissed the strike-out motion and directed the petition to the judge responsible for the earlier orders.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

Use the actual existing cause, applicable power and precise interim or substantive prayers with genuine supporting evidence. Disclose adverse facts, earlier applications, current orders and delay. Complete affidavit, exhibits, urgency certificate only where justified, fee and service under current directions. A proposed corrected motion does not establish that the missing facts or procedural permission exist. Historical losing procedural route. No allegation that new payments or successful appeals actually existed is supplied. Check the real prior record and proper review or appeal route. Apply the relevant personal-bankruptcy or corporate-liquidation provisions and prescribed procedure, rather than treating every insolvency application as an ordinary civil motion.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

A logistics creditor petitioned to liquidate a company for a disputed remaining USD 94,202.68 after earlier statutory-demand litigation and payments. The company applied to strike out the petition on grounds similar to its earlier unsuccessful challenge. Previous orders had permitted insolvency proceedings after non-compliance with security directions.

The Court dismissed the company strike-out application out of deference to the earlier coordinate-court orders and directed the petition to proceed before Wangari J. Costs were to abide the petition outcome. It did not make a liquidation order; the creditor still had to satisfy the Court at the petition hearing.

Section 427 preserves the Court choices on the liquidation petition, including dismissal or adjournment. A failed strike-out motion does not establish final insolvency or entitlement to liquidation. Reconcile payments and exact balances without duplicating credits. The narrative has inconsistent dates for earlier orders; use certified orders, not an assumed chronology. Corporate liquidation and personal bankruptcy use different prescribed processes.

[2025] KEHC 9455 (KLR) - 27 June 2025. Source decision: https://sheriahub.com/cases/ke/caselaw/mitchell-cotts-freight-kenya-limited-v-paleah-stores-limited-2025-kehc-9455-klr

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/mitchell-cotts-freight-kenya-limited-v-paleah-stores-limited-2025-kehc-9455-klr

The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.