



REPUBLIC OF KENYA



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**In re Jeremiah Koskei Bowen (Insolvency Cause E038 of 2022)  
[2023] KEHC 1223 (KLR) (Commercial and Tax) (15 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1223 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E038 OF 2022  
DO CHEPKWONY, J  
FEBRUARY 15, 2023  
IN THE MATTER OF JEREMIAH KOSKEI BOWEN**

**RULING**

1. Jeremiah Koskei Bowen “the Debtor” lodged a Debtor’s Petition dated November 16, 2022 seeking a bankruptcy order to be issued against himself and his estate on the basis that he is unable to pay his debts. The Debtor simultaneously filed an application dated November 17, 2022 for appointment of a trustee of his property in accordance with the provisions of the *Insolvency Act*.
2. The Petition is supported by the Debtor’s Affidavit sworn on November 17, 2022. The Debtor filed its Statement of Affairs dated November 17, 2022 and the Certificate of compliance dated November 22, 2022. The Debtor’s Petition was advertised on Daily Nation Newspaper on November 25, 2022. The Petition has not been opposed.
3. It is important to state here that there is Notice of Appointment of Advocates dated December 13, 2022 by Kitiwa and Partners Advocates on behalf of Janet Tabitha Waceke but no formal response to the Debtor’s Petition has been filed by the said firm of advocates or any other person.
4. Be that as it may, the bankruptcy order sought cannot automatically be grant without looking at the circumstances of the case so as to consider whether the Petition has been made in good faith and or whether the Debtor is genuinely unable to pay his debts. I am guided by *the matter of Stephen Nyaega Mose* (2018) eKLR, on the purpose of Bankruptcy Laws. Wherein it was stated as follows:

“Bankruptcy laws were never meant to protect people like the debtor herein, who are in debt because of their own act of fraud or professional misconduct; but are meant to protect genuine people who have unfortunately found themselves in debt out of innocent factors such as harsh business environment and unavoidable business calamities, but not fraudsters. The aim is to give such people a fresh start in life to enable them “get back to their feet and soldier on in life”. I have no doubt to state that would be blatant abuse of the court process for a debtor to defraud members of the public and when judgment is issued against him,



and ordered to pay his creditors, the court allows him to obtain bankruptcy order, so as to escape justice. That would be wrong for courts if they would allow themselves to be used to protect fraudsters from being forced to pay for their criminal acts by being issued with bankruptcy orders.”

5. In the instant case, in his Supporting Affidavit, the Debtor has stated that he is a Director of Lomson Enterprises Limited which is a business involved in the wholesale purchase and supply of dry maize for milling and selling to the National Cereals Board. He states that the business was doing well until the year, 2014 when it started experiencing difficulties and exponential loss of income leading to substantial debts owed to creditors who have since taken him to court and obtained several adverse court orders against him. He attributes the going down of his business to fraudulent and fictitious dealings conducted by the employees of his company who purchased maize unfit for human consumption, which maize could not be sold to the millers or the National Cereals Board, thus resulting in heavy losses that he has been unable to recover from.
6. The Debtor states that he had taken on various facilities from individuals and banks for the purchase of the dry maize and when he could not sell the stock he had, he defaulted on these loans and the business operated at a loss hence he has eventually shut down. The Debtor claims that several suits have been brought against himself and the company by his creditors for the recovery of debts owed to them, which monies he is unable to repay because of the loss of income and thus cannot make payment arrangements with his creditors.
7. The Debtor holds that he has been subjected to execution through committal to civil jail and still stand to be incarcerated for debts which he is unable to repay. The Debtor has listed several law suits filed against him in diverse courts by different parties, different individual debts of Kshs 47,738,506.4 /= in total all which he is unable to pay and therefore seeks protection from his creditors.
8. The Debtor has filed his Statement of Affairs which shows his total assets to be worth about Kshs 60,000.00 while his liabilities to be Kshs 47,738,506.40 all which are unsecured debts.
9. In this case, the main issue for determination is whether the Petition has merit to warrant the orders of Bankruptcy can issue against the Debtor. This can be determined by examining the twin goals of bankruptcy laws as explained in *Re James Maina Kabatha (Debtor/Applicant)* NKR Insolvency Cause No 4 of 2019 [2020] eKLR, where the court held,

“The twin goals of consumer or individual bankruptcy law are to protect creditors and ensure optimal payment to them where possible; and the provision of shelter and a “fresh start” to individual debtors overburdened by debt.”

10. The Debtor’s Petition is premised under Section 32 of the *Insolvency Act*, 2015 and Regulation 18 of the Insolvency Regulations, 2016.

Section 32 of the *Insolvency Act* states:

“When Debtor may make application for bankruptcy order

1. A debtor may make an application to the Court for an order adjudging the debtor bankrupt only on the grounds that the debtor is unable to pay the debtor’s debts.
2. The court may decline to deal with such an application if it is not accompanied by a statement of the debtor’s financial position containing—



- a. such particulars of the debtor's creditors and of the debtor's debts and other liabilities and assets as may be prescribed by the insolvency regulations.
  - b. such other information as may be so prescribed.
3. The court may reject a statement of the debtor's financial position if of the opinion that it is incorrect or incomplete.
  4. A debtor who makes an application under this section shall publish a notice of the application in—a newspaper circulating within the region in which the debtor ordinarily resides; and in such other publications (if any) as may be prescribed by the insolvency regulations for purposes of this Section.
  5. The court may decline to hear the application if subsection (4) has not been complied with to its satisfaction.

11. Regulation 18 of the *Insolvency Regulations*, 2016 states as follows:

1. An application for a bankruptcy order by the debtor shall be made by way of a bankruptcy petition and shall be in Form 10 set out in the First Schedule.
2. The Petition shall be accompanied by the following documents—
  - a. an affidavit to the petition which shall be in Form 8 set out in the First Schedule;
  - b. statement of debtors financial position, which shall be called a “statement of affairs”, and shall be in Form 11 set out in the First Schedule; and
  - c. application for appointment of trustee which shall be in Form 9 of the First Schedule.
3. For the purposes of section 32 (2) of the *Act*, the statement of the debtor's financial position is required to include the following information—....
4. The Debtor is required to sign and date the statement of the debtor's financial position and arrange for the publication of the statement in the Kenya Gazette.
5. The debtor shall be responsible for the costs of publishing the statement in the Gazette.

12. The Debtor herein has complied with the requirements set out in the *Insolvency Act* Sections 32 (1), (2), and (3) of the *Act*. However, Section 32(4) of the Act requires the Petition to be published in the Newspaper circulating within the region in which the Debtor ordinarily resides and in such other publications if any as may be prescribed by the Insolvency Regulations. Subsection 5 of the Act gives the court the mandate to decline the petition if the subsection 4 has not been complied with.

13. The *Insolvency Regulations* 18(4) calls for the Debtor to sign and date the statement of the debtor's financial position and arrange for the publication of the statement in the Kenya Gazette and to pay for the costs for publication in the Kenya Gazette.



14. In this case while the Debtor has partially complied with the Act and the Regulations, it only published the Petition in the Newspaper and not the Kenya Gazette as required. The provisions of both the act and the Regulations are in mandatory terms so as to inform a party's creditors of the Petition.

15. In the matter of Ali Jillo Fallan (Insolvency Cause No 6 of 2018) [2021] KEHC 8 (KLR) (Commercial and Tax) (10 September 2021) (Ruling) the court had a similar issue and it was stated as follows:-

“The Regulations stipulate the documents to accompany the Petition and the details to be included in the statement of the debtor's financial position. A reading of Regulation 18 and the information filed by the Petitioner shows that the Petitioner did not exercise diligence in providing all the details required under the said Regulations.

35. Additionally, Regulation 18 (4) requires the debtor to sign and date the 'statement of the debtor's financial position and arrange for the publication of the statement in the Kenya Gazette. The Petitioner only annexed a newspaper advertisement. There is nothing to show that the Petition was Gazetted in the Kenya Gazette as the law requires. Insolvency proceedings are class actions by their very nature. This is the reason why the proceedings are advertised in newspapers and the Kenya Gazette. The advertisement affords creditors the opportunity to come forward to either oppose or support the Petition. The Petitioner was required under the law to comply with the regulation and Gazette the Petition. He did not. On the foregoing grounds, the competence of the Petition for want of conformity with the rules is questionable. The court cannot shut its eyes to such a grave failure to comply with the law. The court cannot entertain a practice which has the potential of causing injustice.”

16. Thus, whereas the Debtor's Petition is unopposed, it cannot be granted for the reason that the same has not been published in the Kenya Gazette which is a mandatory requirement. However, this is something that can be remedied by the simple publication in the Kenya Gazette if the Debtor is given an opportunity to. In the case of Peter Kisembe Lubonga vs Faulu Microfinance Bank Limited [2021]eKLR, the court held as follows:-

“Under regulation 18(4) the petitioner is required to publish the notice in the Kenya Gazette. No such notice has been exhibited in these proceedings. This point was considered *in re James Maina Kabatha (Debtor/Applicant)* [2020] eKLR where it was held; In addition, as per Regulation 18(4), in addition to publication of a notice in a newspaper of regional publication as required under section 32(4) of the Insolvency Act, the debtor is also required to arrange for publication of his Statement of Financial Position in the Kenya Gazette. This has not happened here.

In the circumstances of the case, I find that the Petitioner has not complied with this requirement, which is a mandatory requirement. However, I find that the interest justice in this petition will not be served by a dismissal of the Petition I therefore direct the parties to comply and move the court properly. Accordingly, the Petitioner to comply with the regulations within 45 days from the date hereof and move the court accordingly. In default, of compliance within 45 days the Petition will stand dismissed.

17. In the upshot, the Debtor is granted 14 days to comply with the Insolvency Act and Regulations and thereafter move the court for appropriate orders. In default of which, the Debtor's Petition dated November 16, 2022 shall stand dismissed.



It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF  
FEBRUARY\_\_, 2023.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Angichi counsel for Petitioner

Court Assistant - Sakina

