



REPUBLIC OF KENYA



**Kareithi v Unaitas Sacco Limited & another (Insolvency Cause E049 of 2022)
[2023] KEHC 23058 (KLR) (Commercial and Tax) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23058 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E049 OF 2022
JWW MONG'ARE, J
OCTOBER 5, 2023**

BETWEEN

WILSON KANYI KAREITHI PETITIONER

AND

UNAITAS SACCO LIMITED 1ST RESPONDENT

BONIFACE MORANGA 2ND RESPONDENT

RULING

1. Wilson Kanyi Kareithi, the Petitioner herein, on December 22, 2022 filed a petition, seeking a Bankruptcy Order issued in respect of his estate and being unable to pay his debts. The Petition is supported by the Affidavit of the Petitioner sworn on December 22, 2022. The Petition is Official Receiver's Certificate of Compliance dated December 29, 2022.
2. In his supporting affidavit, the Petitioner states that he borrowed Kshs 500,000 from the 1st Respondent, Unaitas Sacco Limited, in 2012 with the intention to undertake a construction and expand his farming business at Mwea. He subsequently took a second loan of Kshs 3,800,000/- in 2013 and a third loan of Kshs 3,000,000/- in 2015 from the said lender. Mr Kareithi further depones that he was taken ill in 2012 and 2013 and had to travel to India to seek treatment. He was, as a result, forced to use part of the proceeds to pay for medical treatment and medication and he thereafter invested the balance of the funds in a dairy and horticultural farm.
3. Mr Kareithi stated that, because of his long absences from his business and high cost of farm inputs and overheads and lack of market for his harvested crop, he was unable to service the loans from the 1st Respondent and the loans went into default. As a result, the 1st Respondent proclaimed and sold his motor vehicle Kxx 7xxX and also auctioned off his guarantor's property LR NO Ngong/Ngong/42xxxx.



4. Mr Kareithi further stated that he was sued by the 2nd Respondent claiming unpaid wages at the Employment and Labour Court and the court in ELRC No 2162 of 2016 returned a judgment of Kshs 1,216,362.04. He states that he is currently indebted to the Respondents at the aggregate sum of Kshs 9,016,362.04/- which he unable to pay. The Petitioner filed written submissions dated May 29, 2023 which he fully adopted at the hearing.
5. The 1st Respondent having been served with the Bankruptcy petition did not file any response or grounds of opposition. The 2nd Petitioner however filed a Replying Affidavit in opposition to the Bankruptcy petition sworn by Boniface Moranga on February 27, 2023.
6. In his answer to the petition, the 2nd Respondent argued that the petition as drafted was incompetent, an abuse of the court process, laden with material misrepresentation, non-disclosure, and half-truths. The Respondent stated that the Petitioner is using and abusing the court process to escape from his lawful obligations and the decree issued in by the Court in ELRC No 2169 of 2016- Boniface Moranga vs Wilson Kanyi Kareithi where the court awarded him a judgement for Kshs 1,300,000 plus interest and costs.
7. The 2nd Respondent further averred that the Petitioner was a man of means, a wealthy land owner and proprietor of LR No xx/22xxx, a multi-million 3-storey building in Southlands Court, Mugomoini Road, off Kitengela Road, Langata Area of Nairobi County. The said Building is christened xxxx Mall. He alleged that the said property is managed by close family members of the Petitioner's family being Ann Njeri Nyakio, Julia Nyakio Kanyi, Githuri.
8. The 2nd Petitioner stated that he worked for the Petitioner at the said Petitioner's property and used to be paid by the Petitioner by Mpesa. The 2nd Respondent alleges that the said Mall is fully let and there is no rent that is below Kshs 20,000/-. He further states that the Petitioner has failed to disclose this property to the court. He further deponed that the Petitioner was also the owner and a shareholder of a company known as Mount Pleasant. He also stated that the Petitioner owned apartments in Rongai and operated a Petrol station along Mombasa Road with his daughter and that he is the manager of all those properties, a factor that he did not disclose to the court. The 2nd Respondent urged the court to dismiss the petition.

Analysis and Determination

9. The main issue for determination is whether the petition for bankruptcy ought to be granted. As observed by Prof Ngugi J, *In re James Maina Kabatha (Debtor/Applicant) NKR Insolvency Cause No 4 of 2019 [2020] eKLR*, '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.' The learned judge adds that:
 - i. The 'fresh start' goal is accomplished through the bankruptcy discharge, which usually releases the debtor from personal liability from certain debts and prevents creditors from taking any action against the debtor to collect those debts.
 - ii. Consequently, bankruptcy protection being an extraordinary relief, one of the corollaries to these seemingly conflictual twin goals of bankruptcy law – the protection of creditors and the provision of fresh start for the honest but unfortunate debtor -- is that an individual seeking bankruptcy protection is required to scrupulously demonstrate that he is acting in good faith and disclose all his financial information.



iii. It is only upon meeting this double threshold – demonstration of good faith and full disclosure of all financial information – that a Petitioner can become entitled to a bankruptcy order. The architecture and structure of the *Insolvency Act* and *Insolvency Regulations*, 2018 reinforce these double thresholds for individual Petitioners.”

10. In considering whether the Petitioner has satisfied the threshold set out in the *Insolvency Act* in granting a Bankruptcy Order, I have considered the application and the supporting documents thereto. I also considered submissions by the Petitioner. I have also considered the facts as pleaded in the sworn affidavit of the 2nd Respondent who, I note, goes to great length in his affidavit to state that the Petitioner is underserving of the orders sought. He, however, did not produce alongside his affidavit any material to support the allegations that the Petitioner is a man of means and that he has laid an elaborate plan to hide his property and deny his debtors their dues. He produced no documents to substantiate his allegations.
11. Under section 32(1) of the *Insolvency Act*, 2015, a debtor is entitled to apply to be adjudged bankrupt on the grounds that he or she is unable to pay his or her debts. I have considered the statement of affairs filed by the Debtor and it shows that the only assets he has are his personal effects worth Kshs 95,000.00/- while the aggregate debt due to the creditors is Kshs 9,016,362.04/- and which includes judgments against him.
12. Having considered all the facts of the petition and the supporting documents I am satisfied that the Petitioner has made sufficient disclosure in the circumstances. He has given an inventory of his assets and liabilities as per his Statement of Affairs annexed to the petition and without any other evidence, I am unable to conclude that he has not made full disclosure.
13. In my view and on the basis of the evidence, I find that there is sufficient evidence that the Petitioner is unable to pay his debts. As stated before, it is trite that in order for a debtor to be shielded through a bankruptcy order, the petition must be made in good faith and there should be no material nondisclosure (see *Ngei v Official Receiver NRB Civil Appeals Nos 51 of 1981 & 3 of 1982 [1982] KLR*). I do not find any reason to conclude that there has been material non-disclosure.

Conclusion and Disposition

14. From the totality of the evidence availed to this court, I am satisfied that the Debtor is unable to pay his debts. I do not find any compelling reason to deny the order of bankruptcy against the Petitioner. I allow the Petition dated December 22, 2020 by making the following orders:
 - a. Wilson Kanyi Kareithi be and is hereby adjudged bankrupt and a bankruptcy order is made against his estate.
 - b. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed to be the Bankruptcy Trustee in respect of the Debtor’s Property.
 - c. Cost of the petition shall be borne out of the Debtor’s estate.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF OCTOBER 2023.

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J. W. W. MONG’ARE
JUDGE

