



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Tabitha Waruguru Njuguna (Insolvency Petition
E001 of 2023) [2024] KEHC 7168 (KLR) (31 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 7168 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
INSOLVENCY PETITION E001 OF 2023
DO CHEPKWONY, J
MAY 31, 2024**

RULING

1. What is before this court for determination is the Notice of Motion application dated 23rd January, 2023 under Sections 9, 11 and 100, all of the [Bankruptcy Act](#) seeking the following orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That the Honourable Court be pleased to order temporary stay of execution of the decree issued in Civil Case No 492 of 2017 in the Chief Magistrate Court at Thika and all consequential orders arising therefrom pending the hearing and determination of this Bankruptcy Petition.
 - e. That the Honourable Court do make any orders it deems fit to enable expeditious disposal of the Petition.
 - f. Costs of this application be provided for.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Tabitha Waruguru Njuguna, on 23rd January, 2023. The Applicant is seeking to be declared bankrupt. She holds that she was the Defendant in Thika CMCC No 492 of 2014 as per the attached Decree where she was ordered to pay Kshs 1,048,810/= which she is unable to pay. That the Decree Holder is seeking execution of the said Decree as per the attached Notice to Show Cause dated 23rd January, 2023 and she does not have any means of income hence is unable to pay the sums. The Applicant has urged the court to allow the application because she is at risk of being committed to civil jail.
3. The Applicant also filed Further Affidavit where she attached a Certificate of compliance which she had not filed at the time of filing the application.



4. In response to the application, the Interested Party filed Grounds of Objection dated 4th July, 2023 on the following grounds:-
 - a. That the application is premised on wrong provisions of the law otherwise the provisions of the law as cited are wrong.
 - b. That the application dated 23rd January, 2023 has not been served upon the Mary Nyambura Wainaina since she is not a party to the Insolvency Proceedings vide Petition No E001 of 2023.
 - c. That the application dated 12th May, 2023 is subjudice in view of the undisposed of application dated 23rd January, 2023.
 - d. The applications dated 23rd May, 2023 and 12th May, 2023 are short of material disclosures since they have not elicited particulars of pleadings, proceedings and decree in Thika CMCC No 492 of 2017.
 - e. That the Applicant has failed to comply with the [Insolvency Act](#) in that the Petition has not been gazzetted and further no citations to Creditors have as well been published and whereas if they have been taken out then the same have not been exhibited.
5. On 6th May, 2023, parties were directed to canvass the application by way of written submissions and the Applicant filed their submissions on 15th August, 2023. The Respondent did not file any submissions or pleadings in response.
6. In considering the application, I have read through the Supporting Affidavit and Grounds of Opposition alongside the Applicant's written submissions and find the main issues arising being:-
 - a. Whether the application has complied with the law for Petition of Bankruptcy?
 - b. Whether the application has merits to warrant the orders sought?

a. Whether the application has complied with the law for Petition of Bankruptcy?

7. It is the argument of the Interested Party that the Petitioner filed the application and relied on Sections 9, 11 and 100 of the [Bankruptcy Act](#). According to the Interested Party, this Act was repealed in 2015 and replaced by the [Insolvency Act 2016](#) and therefore the application is defective and the same ought to be struck out. The Interested Party contends that the Petitioner failed to gazette the Petition and Publish the Citation of the Creditors, which is in violation of the law and thus the application is a non-starter and should be struck out.
8. The Applicant submitted and acknowledged that she had filed the application under the wrong law but urged the court to exercise its inherent powers and issue orders that are necessary and intended to meet the ends of justice. She stated that even though the Petition had not been gazetted, it was still in the preliminary stage and required execution to be stayed so she can proceed to the next stage as required by law.
9. It is trite that once a law has been repealed, the same ceases to exist. This was discussed by the Court of Appeal in the case of [Co-operative Bank of Kenya Limited v Yator](#) (Civil Appeal 87 of 2018) [2021] KECA 95 (KLR) (22 October 2021) (Judgment) which cited the case of [National Social Security Fund Board Trustees & others v Central Organization of Trade Union \(K\)](#) [2015] eKLR, and held that:-

“We have no hesitation in addition in upholding that once an Act of Parliament is repealed it ceases to exist completely unless the Repealing Act provides otherwise and that the repealed law cannot form an order of mandamus.” The Court cited The Punjab - Haryana Indian



Case in the High Court of India *National Planners Limited v Contributories ETC* Air (1958) PH 230 where Bhandari CJ stated as follows;

“The effect of repealing a statute is to obliterate it as completely from the records of Parliament as it had never been passed, and it must be considered as a Law that never existed, except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.”

10. In this case, the Petition was filed in 2023 under Sections 9, 11 and 100 of the [Bankruptcy Act](#). It is trite that the [Bankruptcy Act](#) was repealed by the [Insolvency Act](#) 2015 and therefore the Petition ought to have been filed under these provisions. The court finds that this action by the Applicant is fatal to the suit because under the [Insolvency Act](#) there is a prescribed procedure which must be followed. The court cannot entertain this application further.
11. The upshot is that, without even addressing the other issues raised in the Grounds of Objection dated 4th July, 2023, this Court finds that the application dated 23rd January, 2023 was filed under the wrong provisions of the law and is therefore struck out with costs to the Interested Party.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 31ST DAY OF MAY, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Weiyimi holding brief for Mr. Waweru Nyambura counsel for the Petitioner

Court Assistant - Martin

