



REPUBLIC OF KENYA



**In re Wycliffe Wepukhulu Wasike (Debtor) (Insolvency Cause
E010 of 2021) [2024] KEHC 9937 (KLR) (29 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
INSOLVENCY CAUSE E010 OF 2021**

DK KEMEL, J

JULY 29, 2024

IN THE MATTER OF WYCLIFFE WEPUKHULU WASIKE(DEBTOR)

JUDGMENT

1. The Petitioner herein Wycliffe Wepukhulu Wasike filed the present Petition dated 21st October 2021 seeking a bankruptcy order against himself and his estate. It is supported by his affidavit sworn on even date; an amended statement of financial position; an application for the Court to appoint a suitable trustee over the debtor's estate.
2. The Petitioner deponed inter alia; that he owes unsecured debts amounting to Kshs. 7, 103, 264/=; that individuals as listed in his supporting affidavit instituted suits against him that are still pending in Court; that he is unemployed thus lacks a stable/reliable source of income to satisfy his debts and that it is in the interest of justice that he be adjudged bankrupt. Annexed to the Petition is his amended Statement of Affairs (Individual Person) (Form No. 11) reflecting assets worth Kshs. 120,000/= and liabilities to the tune of Kshs. 7, 103, 264/=. His creditors whose debts are unsecured are shown as individuals with decrees and judgements against the Petitioner herein; student loans; bank loans; finance company loans.
3. Additionally, the Petitioner provided information relating to his affairs deposing that previously he engaged in farming.
4. The Petition was gazetted vide gazette notice published on 20th May 2022 in the Kenya Gazette issue No. 93 of 20th May 2022 Volume CXXIV.
5. The Petitioner also advertised the said matter for hearing in the Star Newspaper for 9th February 2024.
6. The Petition was unopposed.
7. Vide Court directions dated 19th October 2023, the matter was rescheduled for hearing on 15th January 2023.
8. PET-PW1, the Petitioner herein testified that he is a resident of Kimilili and a small businessman. He adopted and relied on his Petition and supporting affidavit dated 21st October 2021 as his evidence in



chief. According to him, he was before this Court seeking to be declared bankrupt as he is unable to meet his financial obligations and pay his debts. He testified that his debts have accrued to a tune of Kshs. 8,000,000/=. He told the Court that his vehicles were involved in a road traffic accident and that he has been unable to meet the demands of the decree holders vide the cases filed and determined against him. He testified that his assets are currently worth Kshs. 900,000/= and that he understands the consequences for one to be declared bankrupt. He told the Court that currently he is unable to pay his debts but he will be able to do so once he puts his affairs in order. He told the Court that auctioneers have already repossessed his household items but that he was never served with a Notice to Show Cause over the decretal sums which are over Kshs. 7,000,000/=

9. At the close of the Petitioner's case, this Court directed the Petitioner to file his submissions.
10. 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:

3. 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.
4. 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.

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-threshold for individual Petitioners."

11. 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 amended Statement of Affairs annexed to the Petition. I am able to conclude that he has made full disclosure. In my view and on the basis of that 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 non-disclosure. (see *Ngei v Official Receiver* NRB Civil Appeals Nos 51 of 1981 & 3 of 1982 [1982] KLR). I do not find reason to conclude that there has been material non-disclosure.
12. 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 amended statement of affairs filed by the Debtor and it shows that the assets he has are Kshs. 120,000/= while the aggregate debt due to the creditors is Kshs. 7,103,264/= and which includes judgments against him.



13. From the totality of the evidence, 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 21st October 2021 by making the following orders:

- a. Wycliffe Wepukhulu Wasike 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.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 29TH DAY OF JULY 2024.

D. KEMEI

JUDGE

In the presence of:

Babra for Khaemba for Petitioner

Kizito Court Assistant

hc insolvency case no. e010 of 2021	0
-------------------------------------	---

