



REPUBLIC OF KENYA



KENYA LAW
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**In re Bornface Wambua Kioko (Bankruptcy Petition E006 of 2023)
[2024] KEHC 16962 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
BANKRUPTCY PETITION E006 OF 2023
F WANGARI, J
DECEMBER 19, 2024**

JUDGMENT

1. The Petitioner, Bornface Wambua Kioko filed a Bankruptcy Petition dated 06/10/2023 seeking for a Bankruptcy Order against himself and his estate. The Petition was supported by an Affidavit dated 28/08/2023. It is deponed that the Petitioner was a Guarantor to Blitz Logistics Ltd for a loan of Kshs. 15,000,000 from Simple Pay Capital Ltd. As at the time of filing the Petition, the amount had accrued to Kshs. 28,550,232.
2. The Petitioner caused to be published a Gazette Notice No. 4681 and dated 09/02/2024, Newspaper adverts in the Daily Nation and Taifa Leo both dated 14/02/2024. The Petition was unopposed. The court directed that the matter be disposed of by way of written submissions. The Petitioner complied by filing the submissions dated 17/10/2024.
3. It was submitted that the Petitioner had complied with the provisions of Section 32 of the *Insolvency Act* 2015.

Analysis

4. I have perused the Petition and its Supporting Affidavit, the annexures thereto, and the submissions filed by the Petitioner. The issue for determination is whether bankruptcy order ought to be granted.
5. The purpose of a petition for bankruptcy is to accord a debtor overwhelmed by debt to get a fresh start. In Nakuru Insolvency Cause No. 4 of 2019 [2020] In re James Maina Kabatha, eKLR, Prof Ngugi J stated as hereunder;

‘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.’
6. The Petitioner deponed that he was a guarantor to Blitz Logistics Limited (the Principal Debtor, where Kshs. 15,000,000 was advanced by Simple Pay Ltd (the Creditor). The Principal Debtor having been unable to pay its debts, it filed Insolvency Proceedings.



7. The Creditor is now demanding Kshs. 28,550,232 as per the demand notice dated 06/02/2023 and which interest continues to accrue, the Petitioner stated that he is unable to pay as the amount is extremely excessive in comparison to his assets.
8. There being no response from the creditors despite the notices issued, I find that the Petitioner has proved that he is unable to pay the debts due and owing as at the date of the judgment.

Determination

9. In view of the above, I make the following Orders:
 - a. The Petitioner is hereby adjudged bankrupt and a bankruptcy order issued as prayed.
 - b. That the Official Receiver or a person nominated by the Official Receiver is hereby appointed as the Bankruptcy Trustee in respect of the Debtor's property.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 19TH DAY OF DECEMBER, 2024.

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F. WANGARI

JUDGE

In the presence of:

M/S Mwangi Advocate for the Petitioner

Brian, Court Assistant

