



REPUBLIC OF KENYA



**In re George Karunji (Insolvency Cause 04 of 2019)
[2023] KEHC 18165 (KLR) (Commercial and Tax) (26 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18165 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE 04 OF 2019**

A MABEYA, J

MAY 26, 2023

JUDGMENT

1. The Creditor herein, Vivo Energy Kenya Limited, filed a Creditor's Petition against the estate of George Karunji who is indebted to the Creditor to the tune of Kshs.2, 949, 580.65 together with interest thereon at the rate of 12% from 1/4/2006 until payment in full and costs of Kshs.239, 300/-.
2. It was the Creditor's contention that two years before the petition, the Debtor committed several bankruptcy offences such as Lacking capacity to pay the debt when it fell due for payment as well as to pay all the debt owed following dismissal of his Appeal in CA No. 253 of 2014; (George Karunji versus Vivo Energy Kenya Limited). That was an appeal he had preferred against the judgment of this Court in HCCC No. 66 of 2008 (Vivo Energy Kenya Limited versus George Karunji) wherein judgement had been entered for Kshs. 2,949,580.00 plus interest and costs.
3. Further that, during the two years immediately preceding the making of the application to the Court for a bankruptcy order in respect of George Karunji to date, has concealed his property to the value of over fifty thousand shillings thereby frustrating the execution process.
4. It is notable from the court proceedings that the Debtor has always been absent despite being served with mention notices as well as the last hearing notice. This was evidenced by the affidavit of Service by Samuel Kimeye dated 14/3/2023.
5. There is only one issue for the court to determine; whether the debtor, George Karunji, should be adjudged bankrupt?
6. The main issue for consideration in the Bankruptcy application against a debtor as stipulated under section 17 of the *Insolvency Act* is to specify the debt owed. The debtor is unable to pay the debt and under the law a debtor is presumed to be unable to pay a debt if he does not comply with or apply to set aside a statutory demand.



7. After a statutory demand, demanding payment is served on a debtor and the debtor does not make payment within 21 days or does not apply to court to set it aside, the creditor may proceed to file a creditors bankruptcy petition against the debtor.
8. In the present case, it is undisputed that the Debtor owes the creditor. Further, the debtor failed and did not comply with the statutory demand dated February 20, 2019.
9. During the hearing, the creditor submitted that the debtor is unable to pay his debts that the Creditor does not hold any security.
10. Under section 25 of the *Insolvency Act*, the court may adjudge a debtor bankrupt;
 - “(1) The court may make a bankruptcy order in respect of the debtor if the creditor has complied with section 7.
 - (2) The court may refuse to adjudge a debtor bankrupt if—
 - (a) the applicant creditor has not satisfied the requirements specified in section 17;
 - (b) the debtor is able to pay the debtor’s debts; or
 - (c) it is just and equitable that the Court should not make a bankruptcy order.”
11. I have considered the record and I am satisfied that the Creditor has satisfied the requirements specified in section 17 of the *insolvency Act* and there is no substantive reason not to adjudge the debtor bankrupt.
12. In light of the above, George Karunji, the Debtor herein is adjudged bankrupt as he is unable to pay his debts.
13. The Creditor also prayed that the court does appoint an authorized insolvency practitioner. In this regard, the Court directs the Official Receiver to appoint an authorized insolvency practitioner in this matter to manage the affairs of the bankrupt.

It is so decreed.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MAY, 2023.

A. MABEYA, FCIArb

JUDGE

