



**In re Benjamin Kola Oyoo (Debtor) (Insolvency Cause 2 of 2023)
[2023] KEHC 24986 (KLR) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24986 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
INSOLVENCY CAUSE 2 OF 2023
MS SHARIFF, J
OCTOBER 27, 2023
IN THE MATTER OF THE INSOLVENCY AT, NO. 18 OF 2015
AND
IN THE MATTER OF INVOLVENCY REGULATIONS, 2016
AND
IN THE MATTER OF BENJAMIN KOLA OYOO (DEBTOR)**

RULING

1. On 24th April, 2023 the debtor herein one Benjamin Kolo Oyoo presented a petition dated 20th April, 2023 pursuant to rule 18(11) of the [Insolvency Regulations 2016](#). He simultaneously filed a notice of motion wherein he sought the following orders:-
 1. Spent
 2. Pending the hearing and determination of this application a temporary conservatory order do issue restraining the execution, attachment and or any recovery proceedings from being commenced or proceedings in any court of law against the debtor.
 3. Pending the hearing and determination of this petition, a temporary conservatory order do issue restraining the execution, attachment and or any recovery proceedings from being commenced or proceedings in any court of law against the debtor.
 4. The court be pleased to appoint an interim trustee for the debtor.
 5. A bankruptcy order do issue against the debtor.
 6. In the alternative to orders 4 and 5 above, this court be pleased to issue a receiver order in these proceedings.
 7. The costs of this application be provided for.



2. The Petitioner served the official receiver who filed a memorandum of appearance through Callen Masaka Principal Litigation Counsel, Attorney General Chambers Kisumu.
3. On 28th September, 2023 the Petitioner's application came up for interpartes hearing and due to the absence of any opposition, the Petitioner prayed that his application be allowed.
4. This court has perused the Petitioner's application, the affidavit in support thereof, the petition and the statement of affairs and it is noted that the statement of affairs has not complied with Regulation 18(3) (j) and (m) of the *Insolvency Regulations 2016*; whereas under debtor is required to file an itemized statement of his expenses, (Regulation 18 (3) (j) and a statement of his current assets, including description, value and location (Re. 18 (3) (m), the Petitioner has failed to do so. The statement of affairs filed pursuant to regulation 18 (2) (b) is economical as it does not meet the full disclosure threshold required under the Act and regulations. The only assets disclosed by the Petitioner are his personal clothes, a bicycle and a six seater sofa set. This court is left wondering as to whether the debtor uses the disclosed items on air as he appears to have no fixed abode.
5. The debtor's lack of candour is evident from his annexure marked 'BKO-1' which is an amended plaint of Kisumu High Court Commercial Case No. 85 of 2018, Grofin Africa Fund -vs- Ground Water Abtraction in Kenya Outreach (GWAKO) Ltd, Benjamin Kola Oyoo and Philip Odongo Kabita t/a Odongo Kabita &Co. Valuers, wherein at paragraphs 8 and 12 it is pleaded that the debtor is the registered proprietor of parcels No. Kisumu/K'Ochieng/334 - Namba Okana Area Nyando Sub-County and Kisumu/Kasule/4922 respectively. The Petitioner's statement of affairs has not disclosed these assets wherefore this court rejects the debtor's statement of affairs for being incorrect and untruthful.
6. The Petitioner has also failed to comply with the provisions of Section 32 of the *Insolvency Act* No. 18 of 2015 which states that:

“A debtor who makes an application under this section shall publish a notice of the application in:-

 - a. A newspaper circulating within the region in which the debtor ordinarily resides; and
 - b. In such other publications (if any) as may be prescribed by the insolvency regulations for purposes of this section.
7. Premised upon the reasons aforesaid the Petitioner's notice of motion dated 20th April, 2023 is hereby dismissed with no orders as to costs and the petition is hereby struck out.

DELIVERED, SIGNED AND DATED AT KISUMU THIS 27TH DAY OF OCTOBER, 2023.

MWANAISHA S. SHARIF

JUDGE

