



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Joseph Maina Kioi t/a B. O/S.I.O/L.O (Insolvency Cause  
E02 of 2021) [2022] KEHC 10626 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10626 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
INSOLVENCY CAUSE E02 OF 2021  
EKO OGOLA, J  
MAY 26, 2022**

**RULING**

1. The Judgment in the Petition herein was on 8/3/2022 reserved for delivery on 29/3/2022, and the file kept by the Judge. The said Judgment is yet to be delivered, the delay being due to busy schedule/ Diary of the court.
2. However, while the file was with the Judge, an application was made in the same file, and being unable to locate the file, the registry opened a skeleton file for that application. In the skeleton file was application by way of Notice of Motion dated 6/5/2022 seeking the following orders:
  - a. That due to the urgency involved herein, service of this application be and is hereby dispensed in the 1<sup>st</sup> instance.
  - b. That the orders granted on the 5<sup>th</sup> August 2021 and 15<sup>th</sup> February 2022 by this Honourable Court be and are hereby set aside and the applicant, Juhudi Kilimo Company Limited be allowed to dispose of the motor vehicle registration number KCD 106A, an Isuzu Lorry.
  - c. That cost of this application be provided for.
3. That application was allocated a date for hearing interpartes being on 21/6/2022.
4. On 17/5/2022 a notice was brought to the Court's attention of a letter of inquiry by M/s Juhudi Kilimo enquiring about the delay in hearing the said application. It then dawned on the Court that there was another file – the skeleton file - where there was an application.
5. I have looked at the nature of the said application dated 6/5/2022 in contrast with the judgment to be written on the Petition herein. The Petition seeks orders of insolvency. The Petitioner seeks to be declared bankrupt and an order of preservation of his estate.
6. This Court now having knowledge of the application dated 6/5/2022 declines to proceed to write judgment on the Petition until such a time as the application dated 6/5/2022 is heard and determined. This is so for the obvious reason that should the Court declare the Petitioner bankrupt, this will have serious effect on the application dated 6/5/2022. The other unintended effect would be that this Court



would be aiding the debtor to escape his creditors. Such would be a mis-use of insolvency laws and proceedings.

7. It seems to me best therefore, to hear the said application first. After that then the Court shall proceed and write Judgment in the petition.
8. The Notice of Motion dated 6/5/2022 shall be heard as scheduled on 21/6/2022 before Court No.2. Orders accordingly.

**DATED, SIGNED AND DELIVERED ON 26TH MAY 2022.**

**E. K. OGOLA**

**JUDGE**

