



REPUBLIC OF KENYA



**In re Stanley Maina Mwangi (Bankruptcy Cause E003 of 2021)  
[2022] KEHC 11656 (KLR) (Commercial and Tax) (23 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11656 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
BANKRUPTCY CAUSE E003 OF 2021  
A MSHILA, J  
MAY 23, 2022  
RE: STANLEY MAINA MWANGI  
DEBTOR'S PETITION**

**RULING**

**Background**

1. The Applicant filed a Notice of Motion dated 8<sup>th</sup> April 2021 under Order 51 Rules and 13 (2) of the [Civil Procedure Rules](#), Sections 3A [Civil Procedure Act](#) and Sections 304 and 305 (b) of the [Insolvency Act](#) for orders that;
  - a. Court do grant the Applicant interim orders pending hearing and determination of the main Bankruptcy Petition as there is reasonable apprehension that the Applicant may suffer injustice if the orders sought are not granted as soon as possible.
  - b. The Applicant is a judgement debtor in Kigumo Civil Case No. 114 of 2015 and is to deposit the decretal amount by 13<sup>th</sup> May, 2021 but he cannot raise the said amount intends to make a proposal.
2. The Application was supported by the sworn Affidavit of Stanley Maina Mwangi who stated that the Applicant will suffer substantial loss if the orders sought are not granted as there is a bankruptcy petition filed by the Applicant and the same is yet to be determined. The Applicant is unable to pay his debts within the meaning prescribed in the [Insolvency Act](#) and it is in the interests of justice that the orders sought in the Application be allowed.

**Issues For Determination**

3. This Court has considered the Debtor's Petition and the only issue for determination is;
  - a. Whether the Debtor should be granted interim orders pending the hearing and determination of the Bankruptcy Petition?



## Analysis

4. The Applicant is a judgment debtor in Kigumo Civil Case No.114 of 2015 and is required to deposit the decretal amount. In addition, there is a pending Bankruptcy Petition.
5. The Debtor acknowledges owing a total of Kshs.847, 033 to two Creditors; that is Kshs.371, 978 owed to Patrick Kamau Gitau and Kshs.475 055 owed to Kittony Maina Karanja Advocates. The Debtor is unable to raise the said amount and intends to make a proposal.
6. The Application is brought under Sections 304 and 305 of the *Insolvency Act* which provide as follows;

Under Section 304 of the Act are Provisions on when an Application for an Interim Order can be made: -

- (1) An application to the Court for an interim order may be made if the debtor intends to make a proposal to the debtor's creditors under this Division for a composition in satisfaction of the debtor's debts or a scheme of arrangement of the debtor's financial affairs.
  - (2) The debtor shall ensure that the proposal provides for a person to act as supervisor of the voluntary arrangement to which the proposal relates.
  - (3) Only an authorised insolvency practitioner is eligible to act as supervisor of a voluntary arrangement.
  - (4) Subject to subsection (2), such an application may be made—
    - (a) if the debtor is an undischarged bankrupt-by the debtor, the bankruptcy trustee of the debtor's estate or the Official Receiver; and
    - (b) in any other case-by the debtor.
  - (5) An application may be made by a debtor who is an undischarged bankrupt only if the debtor has given notice of the proposal to the Official Receiver and, if there is one, the bankruptcy trustee of the debtor's estate.
  - (6) An application may not be made while a bankruptcy application made by the debtor is pending, if the Court has, under section 33, appointed an authorized insolvency practitioner to inquire into the debtor's financial affairs and to report on those affairs to the Court.
7. Section 305 (b) of the *Insolvency Act* provides that the Court—
    - (i) may prohibit distress from being levied on the debtor's property or its subsequent sale, or both; and
    - (ii) may stay any action, execution or other legal process against the property or person of the debtor.
    - (2) A court in which proceedings are pending against the debtor may, on proof that an application has been made under section 304 in respect of the debtor, either stay the proceedings or allow them to continue on such terms as it considers appropriate.



8. The powers of the Court to make an interim order are provided for under Section 306 of the *Insolvency Act* which states as follows:

On the hearing of an application made under section 304, the Court may make an interim order if satisfied—

- (a) that the debtor intends to make a proposal under this Division;
- (b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to make an application for the debtor's own bankruptcy;
- (c) that no previous application has been made by the debtor for an interim order during the twelve months immediately preceding that day; and
- (d) that the supervisor designated under the debtor's proposal is willing to act in relation to the proposal.

9. This court is satisfied that the Applicant has satisfied the conditions required under the provisions of Section 306 (1) of the *Insolvency Act* and further, the Applicant provided a statement of Account marked "SMM-3" indicating that he only had a balance of Kshs.2, 442.41 in his account and is thus unable to pay his debts.

#### **Findings And Determination**

10. In the light of the forgoing reasons the court makes the following findings and determinations;

- i. The Application is found to have merit and it is hereby allowed;
- ii. An Interim Order of stay is hereby granted against any action, execution or other legal process against the property or person of the debtor is stayed for fourteen (14) days;
  - i. The Applicant shall forthwith serve the Official Receiver and the creditors with a copy of this Order;
  - ii. Mention on 7/06/2022 for further directions.

11 Orders Accordingly.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY, 2022.**

**HON. A. MSHILA**

**JUDGE**

In the presence of;

No appearance by the Applicant

Lucy-----Court Assistant

