



**Re: Madhav Moolraj (Insolvency Cause E027 of 2020)
[2022] KEHC 12784 (KLR) (Commercial and Tax) (26 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 12784 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E027 OF 2020**

A MSHILA, J

AUGUST 26, 2022

RE: MADHAV MOOLRAJ

JUDGMENT

1. Madhav Moolraj Debtor's Petition dated November 30, 2020 thus moved the court;

“I, Madhav Moolraj, an adult of sound disposition and whose postal address is P O Box 46188-00100, Nairobi City, lately residing at Nairobi City within the Republic of Kenya and previously carrying on business at Nairobi City, having for the greater part of the past six months resided at Nairobi City and carried on business at Nairobi City within the jurisdiction of the Court, and being unable to pay my debts, hereby petition the court that a bankruptcy order be made in respect of my estate and that I may be adjudged bankrupt.”

2. The petitioner swore a Supporting Affidavit and prayed for the court to adjudge him bankrupt on account of an outstanding sum of kes 59,589,531.25/ = owed to various creditors which debt consists of historical debts that the petitioner took over (as explained in the Affidavit) and that incurred in his personal name. His creditors include friends, business associates, shylocks, forex bureaus and banks (bank overdraft facilities).
3. This petition has been necessitated by the realization that the petitioner has no assets and there is no reasonable prospect whatsoever that he will be able to settle the debts.
4. As a result of taking overdraft facilities, he has a debit balance of kes 73,749.25/ = which he holds in his kenya shillings account number xxxx with Prime Bank Limited. He also has a credit balance of kes 88.37/ = which he holds in his kenya shillings account number xxxx with I&M Bank Limited.
5. As at October 2020, the company's kenya shilling bank account number xxxx with Mayfair Bank Limited had a balance was kes 1,935/= which is insufficient to settle the debt in full. Similarly, the company has a NIL balance in its kenya shilling bank account number 03801623901210 with I & M Bank Limited.



6. The petitioner's only assets at present are:
 - a) A cash sum of kes 112,852.36 which he holds in his kenya shillings account number xxxx with Mayfair Bank Limited.
 - b) A share in Corrington Holdings Limited which he holds as a nominee on behalf of Karn Behal.
 - c) Shares in Horse Shoe Tavern Limited the company through which he operated a food catering business from September 2017 to March 2020.
7. Unless the bankruptcy order sought is granted, the petitioner is apprehensive that he will be subjected to debt recovery proceedings with potential for imprisonment as part of execution measures taken by his creditors despite their knowledge of his inability to pay back the debt. In the circumstances it would only be fair and in the interest of justice to grant the bankruptcy order sought in this petition as he is unable to pay the debt.
8. Lastly, the petition was brought in good faith.
9. The official receiver, Mark Gakuru, then furnished a certificate of compliance dated December 4, 2020 stating as follows:

“This is to certify that Madhav Moolraj named in the debtor's petition filed herewith has submitted to the official receiver the prescribed forms and has paid the mandatory deposit of kenya shillings thirty thousand only (kshs 30, 000/-) towards the official receiver's expenses.

The official receiver's receipt no A-0671091 has been issued to the petitioner in acknowledgment.”

Issues for determination

10. After considering the petition, Supporting Affidavit and the supporting documents, the court frames only one issue for determination;
 - a. Whether the petition for bankruptcy ought to be granted?

Analysis

11. Under section 32(1) of the *Insolvency Act*, a debtor is entitled to apply to be adjudged bankrupt on the grounds that he or she is unable to pay his or her debts. Section 32 (1) provides as follows;
 - (1) A debtor may make an application to the court for an order adjudging the debtor bankrupt only on the grounds that the debtor is unable to pay the debtor's debts.
12. Further, section 32(2) of the *Insolvency Act* provides the requirements that must be met by the petitioner as follows;
 - (2) The court may decline to deal with such an application if it is not accompanied by a statement of the debtor's financial position containing—
 - (a) such particulars of the debtor's creditors and of the debtor's debts and other liabilities and assets as may be prescribed by the insolvency regulations; and
 - (b) such other information as may be so prescribed.



13. *In Re James Maina Kabatha (debtor/applicant)* NKR Insolvency Cause no 4 of 2019 [2020] eKLR the court stated;

“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.

The “fresh start” goal is accomplished through the bankruptcy discharge, which usually releases the debtor from personal liability from certain debts and prevents creditors from taking any action against the debtor to collect those debts.

Consequently, bankruptcy protection being an extraordinary relief, one of the corollaries to these seemingly conflictual twin goals of bankruptcy law – the protection of creditors and the provision of fresh start for the honest but unfortunate debtor -- is that an individual seeking bankruptcy protection is required to scrupulously demonstrate that he is acting in good faith and disclose all his financial information.

It is only upon meeting this double threshold – demonstration of good faith and full disclosure of all financial information – that a petitioner can become entitled to a bankruptcy order. The architecture and structure of the *Insolvency Act* and Insolvency Regulations, 2018 reinforce these double thresholds for individual petitioners.”

14. The petitioner filed his statement of affairs which shows that the only asset he has is cash at hand worth kshs 188, 536.61 against his debt of kshs 59, 589, 531.25. Based on the evidence provided by the petitioner, the court is satisfied that the petitioner is unable to pay his debts.
15. The petitioner having been filed in good faith and supported by evidence, the court finds no reason to deny the order of bankruptcy against the petitioner.

Findings and determination

16. In the light of the forgoing reasons the court makes the following findings and determinations;
- i. The application seeking a bankruptcy order is found to have merit and it is hereby allowed;
 - ii. The applicant is hereby adjudged as a bankrupt on account of the outstanding debts;
 - iii. 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 up-to October 6, 2022;
 - iv. The applicant shall forthwith serve the official receiver and the creditors with a copy of this order;
 - v. Mention on October 6, 2022 for further directions.

Orders Accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 26TH DAY OF AUGUST, 2022.

HON A MSHILA

JUDGE

In the presence of;

Brian Onyango for the petitioner



Lucy-----court assistant

