



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

INSOLVENCY CAUSE NO. E001 OF 2020

PETER KISEMBE LUBONGA..... PETITIONER

VERSUS

FAULU MICROFINANCE BANK LIMITED.....RESPONDENT

RULING.

The petitioner, a resident of Maliki Township in Bungoma County petitioned this court to make a bankruptcy order in respect of his estate and he be adjudged bankrupt on the grounds that he is unable to pay the sum of Kshs 684, 655.41/= due and owing to the respondent.

In his affidavit accompanying the petition, he depones that he borrowed the money from the respondent in the year 2018 to boost a business he was running which subsequently collapsed in 2019 after he had supplied timber worth over Kshs 2,000,000/= to a businessman in Lodwar who later allegedly relocated to South Sudan and could not be reached. That as matters stand, he has no other means or source of livelihood.

The respondent opposed the petition and filed a Replying affidavit through its Legal Officer who depones that the petitioner has not complied with the requirements of Sections 15(b) and 32 of the Insolvency Act. She depones that the loan was secured by a charge over land parcel Bungoma/Kamakoiwa/4338 registered on 13/11/2018 and upon default, the respondent moved in to realize the security before the petitioner filed the instant petition. That the petitioner has not disclosed any attempts made at collecting the debt allegedly owed by one Hamed Abdi since the said debt is not included in the statement of affairs.

The matter was disposed of by way of written submissions. Only the petitioner complied.

Submitting on Section 32(1), 33 of the Insolvency Act and Regulation 19 of the Insolvency Regulations 2016, the petitioner submits that he has met the threshold for a grant of the orders.

The petitioner in buttressing his case relied on the decisions in *Rajendra Ratilal Sanghani Vs Schoon Ahmed Nurani (2018)eKLR* and in *the matter of Jitesh Dhirajal Malde Insolvency Cause E159/2019*.

The first step the court ought to determine is to ascertain whether the petitioner has complied with the procedure set out by the law in filing of the petition.

Section 32 of the Insolvency Act, 2015 is the first port of call. The Section provides as follows;

(1) A debtor may make an application to the Court for an order 2adjudging the debtor bankrupt only on the grounds that the debtor is unable to pay the debtor's debts.

(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.

(3) The Court may reject a statement of the debtor's financial position if of the opinion that it is incorrect or incomplete.

(4) 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 prescribed by the insolvency regulations for purposes of this section.

(5) The Court may decline to hear the application if subsection (4) has not been complied with to its satisfaction.

The court has carefully perused the statement of affairs accompanying the petition and finds that the same falls short of the threshold. Under Regulation 18(3) of the Insolvency Regulations 2016, there are material information which must be disclosed by the petitioner which this court finds have not been disclosed.

Under regulation 18(4) the petitioner is required to publish the notice in the Kenya Gazette. No such notice has been exhibited in these proceedings.

This point was considered in *In re James Maina Kabatha (Debtor/Applicant) [2020] eKLR* where it was held;

In addition, as per Regulation 18(4), in addition to publication of a notice in a newspaper of regional publication as required under section 32(4) of the Insolvency Act, the debtor is also required to arrange for publication of his Statement of Financial Position in the Kenya Gazette. This has not happened here.

In the circumstances of the case, I find that the petitioner has not complied with this requirement, which is a mandatory requirement. However I find that the interest justice in this petition will not be served by a dismissal of the petition I therefore direct the parties to comply and move the court properly. Accordingly the petitioner to comply with the regulations within 45 days from the date hereof and move the court accordingly. In default, of compliance within 45 days the Petition will stand dismissed. There shall be no order as to cost

DATED AT BUNGOMA THIS 29TH DAY OF OCTOBER, 2021.

S.N. RIECHI.

JUDGE.