



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 1161 OF 2000

ABINEL ARIGA OGAMBA.....PLAINTIFF/RESPONDENT

VERSUS

THE PEOPLE LIMITED.....1ST DEFENDANT

SHEM OIRERE.....2ND DEFENDANT/APPLICANT

RULING

1. The 2nd defendant/applicant has brought the Notice of Motion dated 13th July, 2021 supported by the grounds presented on its face and the facts stated in his affidavit. The applicant sought for the following orders in his Motion:

i. Spent.

ii. THAT this Honourable Court be pleased to discharge the applicant from all debts listed in the applicant's application for no asset procedure and owing to the fact that he was admitted to the No asset procedure under the Insolvency Act, 2015 on 30th August, 2016.

iii. THAT this Honourable Court be pleased to discharge warrants of arrest that may have been issued against the applicant, if any.

iv. THAT costs of the application be provided for.

2. Going by the record, it is apparent that the Motion stands unopposed since the plaintiff/respondent did not file any documents in response thereto or participate at the hearing thereof despite there being evidence of service made to him.

3. The record shows that the 1st defendant equally did not participate in these proceedings.

4. When the Motion came up for hearing before this court on 27th October, 2021 the applicant through his advocate chose to rely on the averments made in the Motion.

5. I have considered the grounds set out on the face of the Motion plus the facts deponed in the affidavit supporting it.

6. A brief background of the matter is that the respondent instituted the suit against the 1st defendant and the applicant herein and sought for various reliefs emanating from a claim in the nature of defamation.

7. Upon hearing the parties at the trial, the court by way of the judgment delivered on 14th September, 2012 found in favour of the respondent and against the 1st defendant and the applicant, thereby awarding the respondent general damages in the sum of Kshs.850,000/= together with costs of the suit.

8. Subsequently, the matter proceeded for taxation and a certificate of taxation was issued on 27th March, 2013.

9. Returning to the instant Motion, it is noted that the orders sought therein touch on the discharge of the applicant from all liabilities/debts owed listed in his application for No Asset Recovery (NAP) pursuant to the provisions of the Insolvency Act No. 18 of 2015 ("the Act").

10. The applicant states in his affidavit that he was admitted into NAP on 30th August, 2016 and that the respondent and other creditors upon being duly informed of this position, did not raise any objections to the said admission.

11. The applicant states that going by the provisions of the Act, he therefore ought to be discharged of all liabilities more so the debt owed to the respondent in the present suit, and that the warrants of arrest issued against him be further discharged.

12. Upon my perusal of the record, I observed that annexed to the Motion is a copy of the Notice of Admission to NAP dated 5th September, 2016 indicating that the applicant was admitted on 30th August, 2016 vide Insolvency Cause No. NAP002 of 2016.

13. The applicant also annexed a copy of the gazette notice dated

15th September, 2017 to further show his admission to NAP under the provisions of **Section 349 (1)** of **the Act** stipulating that:

“A debtor is admitted to the no-asset procedure when the Official Receiver sends the debtor a notice in the form prescribed by the insolvency regulations for the purposes of this section.”

14. The aforementioned gazette notice indicates that the NAP was set to last a duration of 12 months from the date of admission.

15. **Section 354** of **the Act** provides for instances where a debtor’s participation in the NAP can be terminated, including:

(a) the Official Receiver terminates the debtor's participation under section 355;

(b) the debtor is discharged under section 359;

(c) the debtor applies for the debtor's own bankruptcy; or

(d) a creditor who is entitled to do so (for example, because the creditor's debt is enforceable as a debt specified in section 351(2)) applies for the debtor's bankruptcy and the debtor is adjudged bankrupt.

16. Furthermore, **Section 357** of **the Act** expresses thus:

“(1) On termination of the debtor's participation in the no-asset procedure—

(a) the debtor's debts that became unenforceable on the debtor's entry to the no-asset procedure become again enforceable; and

(b) the debtor becomes liable to pay any penalties and interest that may have accrued.

(2) Subsection (1) does not apply if the debtor's entry to the no-asset procedure is terminated by discharge under section 359.”

17. Of equal relevance is **Section 359(1)** of **the Act** which provides for the automatic discharge of a debtor participating in the NAP at the end of 12 months from the date of admission.

18. Last but not least, **Section 360** stipulates the following:

“(1) On discharge under section 359—

(a) the debtor's debts that became unenforceable on the debtor's entry to the no-asset procedure are cancelled; and

(b) the debtor is no longer liable to pay any part of the debts, including any penalties and interest that may have accrued.”

19. Going by the contents of the gazette notice, it is apparent that the applicant was discharged under **Section 359(1)** (supra) which implies that the proviso of **Section 360(1)** (supra) would apply and hence the applicant’s listed debts would remain unenforceable.

20. Upon my perusal of the record, it is apparent that warrants of arrest were issued to the respondent on 7th December, 2017 and it remains unclear whether there are any outstanding warrants.

21. Suffice it to say that in view of the foregoing circumstances, I am satisfied that the applicant is entitled to a discharge of his listed debts.

22. Consequently, I will allow the Motion dated 13th July, 2021 thus giving rise to issuance of the following orders:

i. The applicant be and is hereby discharged from all debts listed in his application for no asset procedure and owing to the fact that he was admitted to the No asset procedure under the Insolvency Act, 2015 on 30th August, 2016.

ii. There shall be a discharge of warrants of arrest that may have been issued against the applicant, if any.

iii. There shall be no order on costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24TH DAY OF NOVEMBER, 2021.

.....

J. K. SERGON

JUDGE

IN THE PRESENCE OF:

..... **FOR THE PLAINTIFF/RESPONDENT**

..... **FOR THE 1ST DEFENDANT**

..... **FOR THE 2ND DEFENDANT/APPLICANT**