



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

INSOLVENCY CAUSE NO.15 OF 2016

HON. ROBINSON NJERU GITHAU.....DEBTOR

VERSUS

MAE PROPERTIES LIMITEDCREDITOR

RULING

1. This ruling is in respect to the application dated 30th December 2016 wherein the Debtor seeks to set aside the Creditors Statutory Demand Notice dated 7th December 2016 on the basis that the decree that is the subject of the insolvency petition has been partly paid and that the applicant/Debtor has made arrangements and offered securities for the remainder of the decretal amount.
2. The application was opposed by the Creditor through the replying affidavit of its company secretary, **Emma Wachira**, who avers that the Debtor failed to pay the decretal sum despite the consent judgment recorded on 4th November 2014 and that the debt has been owing for the last 17 years.
3. She further avers that even though the Debtor paid part of the decretal sum in March 2017, he was not offered any security for the remainder of the decretal sum as alleged.
4. It is the Creditor's case that the application to set aside the Statutory Demand does not meet the threshold for such setting aside.
5. When the matter came up for hearing on 20th November 2019, **Miss Kitenge**, learned counsel for the Debtor requested for 30 days to enable the Debtor settle the debt failure of which the application may proceed for hearing. **Mr. Kahura**, for the Creditor objected to the Debtor's request while arguing that similar undertakings to settle the debt had not been honoured. This court however granted the Debtor the opportunity to settle the debt and listed the matter for hearing on 27th January 2020 when neither the Debtor nor his counsel on record turned up in court thereby prompting the Creditor's advocate to move the court to dismiss the application dated 30th December 2016 for want of prosecution.
6. I have considered the application dated 30th December 2016, the creditor's replying affidavit dated 9th May 2017 and the debtors request of 20th November 2019 to settle the outstanding debt. I note that neither the Debtor nor his counsel on record attended court on 27th January 2020 to prosecute the application and that the Debtor's undertaking to settle the debt had also not been fulfilled.
7. In the circumstances of this case I am not satisfied that the application dated 30th December 2016 is merited and I therefore dismiss it with costs to the Creditor.
8. Turning to Creditor's petition dated 27th February 2017 the Creditor argued that pursuant to this court's orders of 20th November 2019, the petition stands unopposed and ought to be allowed as prayed in view of the fact that the Debtor had been duly served with the Statutory Demand and that there is no pending application to set aside the said demand.
9. I note that on 20th November 2019 this court also listed the petition for hearing on 27th January 2020. In view of the fact the petition is unopposed and owing to the fact that the Creditor has complied with the requirements under Section 17 of the Insolvency Act and Regulations.
10. I hereby allow the petition dated 27th February 2017 as prayed and order that an a bankruptcy order be made against the debtor. I grant the costs of the application and the petition to the Creditor.

Dated, signed and delivered in open court at Nairobi this 27th day of February 2020.

W. A. OKWANY

JUDGE

In the absence of:

All the parties.

Court Assistant: Sylvia