



IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

INSOLVENCY PETITION NO. E011 OF 2019

CORAM: D. S. MAJANJA J.

IN THE MATTER OF THE INSOLVENCY ACT, 2015

AND

IN THE MATTER OF JAMES MWANGI NDERITU T/A JAJO ENTERPRISES (A DEBTOR)

JUDGMENT

1. James Mwangi Nderitu (“the Debtor”) was at all material times a partner with his wife, Joyce Wangechi Mwangi in a business trading as Jajo Enterprises. He has brought the petition dated 25th July 2019 seeking that a Bankruptcy Order be made in respect of his estate or that he be adjudged bankrupt. His wife has also filed a petition for bankruptcy being **Insolvency Cause No. IC E010 of 2019**.

2. The grounds upon which the petition is based are set out in the Debtor’s supporting affidavit sworn on 25th July 2019. The Debtor deponed that he and his wife started an agrovet business in 2002. They were selling agro-chemicals, veterinary products, animal feed, mineral licks and seed based in Naroosura within Narok County. They formally registered their business; Jajo Enterprises, on 25th September 2009. As the business grew, they opened another shop at Ewasonyiro Centre in Narok County. They further incorporated Jajo Enterprises Limited on 12th June 2013 although they continued trading through their name.

3. The Debtor further deponed that during the 2007/2008 post-election violence all their assets and stock were stolen or destroyed leaving them with a heavy financial burden. As the economy continued to improve and with a desire to expand their business the Debtor and his wife invested over Kshs. 4 million to grow 27 acres of tomatoes. Unfortunately, the crop was destroyed by a pest known as *Tuta absoluta* and a disease known as tomato spotted wilt virus. As a result of default from other farmers whom they had supplied products on credit, they could not recover the Kshs. 4 million investments. Following the difficult business environment, the Debtor closed down the shop at Ewasonyiro in January 2019 and the shop in Naroosura in November 2018.

4. The Debtor deponed that at the time he was also struggling to pay a loan he had taken from Equity Bank to purchase motor vehicle registration KAR 995M. The motor vehicle was involved in an accident on 24th November 2016. He repaired it and sold to to one Samuel Mwangi Nderitu for Kshs. 600,000.00. He used the money to revive the business but to no avail.

5. The Debtor stated that he owed various creditors **Kshs. 9,795,370.00** as at **25th July 2019**. The following creditors had made specific demands to him:

a. Osho Chemical Industries Limited for supply of various agro-vet products. It sued the Debtor in Milimani CMCC No. 1661 of 2018; Osho Chemical Industries Limited v James Mwangi Nderitu and Another. Judgment was entered against the Debtor and on 26th June 2019 he owed Kshs. 3,244,253.00.

b. Twiga Chemical Industries Limited Kshs. 986,007.30 due and owing as at 22nd March 2017.

c. Amiran Kenya Limited Kshs. 1,106,901.71 as at 27th July 2017.

d. Starke Ayres (K) Limited Kshs. 143,440.00 as at 6th September 2017.

- e. Agrosolutions Limited Kshs. 326,502.12
- f. Agrichem Africa Limited Kshs. 125,214.90 as at 16th November 2017.
- g. Elgon Kenya Limited Kshs. 46,520 as at 31st July 2018.

6. The Debtor also disclosed other creditors who had not made any demand on him as follows:

- a. Vegflo Seeds (K) Limited Kshs. 150,000.00
- b. East Africa Seed Co. Limited Kshs. 309,656.00
- c. Chemical Land LTF Kshs. 189,380.00
- d. Orbit Chemicals Limited Kshs. 635,198.00
- e. Greenlife Crop Protection Africa Limited Kshs. 109,320.00
- f. Biomedical Limited Kshs. 110,000.00
- g. Pannan Seeds (K) Limited Kshs. 1,050,000.00
- h. Crop Health Technologies Limited Kshs. 135,000.00
- i. Bhole Pharmacy Kshs. 150,000.00
- j. Prof. Salore Sena (rent) Kshs. 81,450.00
- k. Siana Agro Supplies Kshs. 231,000.00
- i. High Chem Essential Limited Kshs. 71,150.00

7. The Debtor depones that he has two children in High School who rely on him for support. He prays that in order to protect him from execution and committal to civil jail, the court should adjudge him bankrupt.

8. The petition was advertised on 5th September 2018 and fixed for hearing on 21st February 2020. All the creditors were duly served with the hearing notices. Osho Chemicals Limited, Starke Ayres (K) Limited and Greenlife Crop Protection Africa Limited appeared at the hearing of the petition. They did not file any affidavit responding to the petition.

9. The Debtor testified along the lines set out in the petition. When cross-examined, he stated that he was not involved in propagating tomato seedlings for other farmers and was able to rent two rooms in Narok for Kshs. 4,000/- where he was residing with his family. He stated that he was earning commissions of about Kshs. 15,000.00 per month.

10. Under **section 32(1)** of the **Insolvency Act, 2015**, 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. I have considered the statement of affairs filed by the Debtor and the entirety of the evidence and it shows that the only assets the Debtor has are personal effects worth **Kshs. 30,000.00** while the total debt due to the creditors is **Kshs. 9,795,370.00**. Although, the Debtor is earning some money for his upkeep, I am satisfied that the Debtor is unable to pay his debts.

11. I therefore make the following orders:

- a. **JAMES MWANGI NDERITU** be and is hereby adjudged bankrupt and a bankruptcy order is made against his estate.
- b. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed to be the Bankruptcy Trustee in respect of the Debtors Property.
- c. Cost of the petition shall be borne out of the Debtor's estate.

DATED and DELIVERED at NAIROBI this 30th day of MARCH 2020.

D. S. MAJANJA

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

D. S. MAJANJA

JUDGE

Court Assistant: Mr. M. Onyango.

Mr Waweru instructed Guandaru Thuita and Company Advocates for the Debtor.

Mr Kabugu instructed by Wainaina Ileri Advocates LLP for Creditor (Starke Ayres (K) Limited) and also instructed by Gatore Jay and Company Advocates for Creditor (Greenlife Crop Protection Africa Limited)