



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND TAX DIVISION

BANKRUPTCY CAUSE NO. 15 OF 2014

IN THE MATTER OF: THE BANKRUPTCY ACT, CAP 56 LAWS OF KENYA (REPEALED)

- AND -

IN THE MATTER OF: PAUL KIMANI

EX PARTE: CALEB KAPTEN

HON. PAUL KIMANI WAMATANGI.....APPLICANT

RULING

1. **CALE KAPTEN** petitioned for bankruptcy of **PAUL KIMANI** for a debt of Ksh 1,420,000. That is the amount stated in the Bankruptcy Notice, dated by Kaptan, on 6th November 2014.
2. Parties entered into a consent on 8th September 2016 whereby Kimani agreed to settle that amount in that notice by instalment.
3. The petition came up for hearing on 18th February 2019 when Kaptan informed the court that Kimani had paid the amount of Ksh1,420,000 and the balance which was outstanding and not paid was Ksh 511,660 representing interest. On receipt of that evidence, since Kimani failed to attend court, this court by its Ruling of 9th May 2019 issued a bankruptcy order and directed the Official Receiver to appoint Bankruptcy Trustee.
4. That order provoked the application under consideration. It is the Notice of Motion application dated 25th July 2019. In that application, filed by Kimani, the order sought is the rescission, revocation or vacation of the bankruptcy order and that the court do dismiss or strike out the petition.
5. The only issue to determine is whether Kaptan is entitled to claim an amount of Ksh 511,660 representing interest.
6. In my view this is an open and shut case. Kaptan, the petitioner, when he petitioned for bankruptcy of Kimani filed the bankruptcy notice in the following terms:

“BANKRUPTCY NOTICE

(Under Rule 5 of the Bankruptcy Rules)

TO: PAUL KIMANI

P. O. BOX 4326-00506

NAIROBI

TAKE NOTICE that within seven days after service of this notice on you, excluding the day of such service, you must pay to **CALEB KAPTEN**, of P.O. Box 68254-00200 Nairobi or to **ASHITIVA & COMPANY ADVOCATES**, of P.O. Box 21372-00100 NAIROBI its agent duly authorized the sum of **KENYA SHILLINGS ONE MILLION FOUR HUNDRED AND TWENTY**

THOUSAND (KSH 1,420,000/=) claimed by the said CALEB KAPTEN as being the amount due on a Final Judgment obtained by him against you in the Court, dated 26th September, 2014 whereon execution has not been stayed, or you must secure or compound for the said sum to his satisfaction or the satisfaction of his said agent or to be satisfaction of the Court; or you must satisfy the Court that you have a counter-claim, set-off or cross demand against him which equals or exceeds the sum claimed by him and which you could not set up in the action or other proceedings in which the Judgment or Order was obtained.

DATED AT NAIROBI THIS..6th ..DAY OF....Nov...2014

Deputy Registrar

7. Kapten has confirmed that the amount in the above bankruptcy notice has been paid. What Kapten wishes to be paid is the interest which was awarded in the Chief Magistrate's Civil Case No. 4416 of 2011. But such claim would be outside the bankruptcy notice. It is the bankruptcy notice that lays the claim of the petitioner for bankruptcy. It follows that I am not persuaded that Kapten is entitled to claim the amount he has continued to claim.

8. Accordingly, I find merit in the Notice of Motion and I do grant the following orders:

a. An order is hereby issued rescinding, revoking, vacating, setting aside and annulling the bankruptcy order issued on 9th May 2019.

b. The debt in the bankruptcy Notice dated on 6th November 2014 having been fully paid by Paul Kimani this bankruptcy cause is marked as concluded.

c. There shall be no order as to costs to the Notice of Motion dated 25th July 2019.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17th April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **30th** day of **April, 2020**.

MARY KASANGO

JUDGE