



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA.**

**MISC. CRI. APPL. CASE NO. 21 OF 2019.**

**SUSAN BUKOSHE OMBUNYA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING.**

By application dated 20<sup>th</sup> April, 2019 the applicant Susan Bukoshe Ombunya sought this Court to grant the following orders;

**1. THAT this Honourable Court be pleased to grant stay of proceedings in Sirisia Principal Magistrate;s Criminal Case No. 229 of 2017 pending the Hearing and determination of this Application.**

**2. THAT pursuant to the Receiving Orders issued in Kisumu High Court Bankruptcy Cause No. 8 of 2014, this Honourable Court be pleased to direct that the Applicant be exempted from participating in Criminal and Civil litigation and/or any other legal proceedings.**

The grounds for the application are that the applicant had been charged with offence of obtaining by false pretence in Sirisia PMCR 229/2017 where the complainant is one Saida Nelima and that she has in force a Receiving order issued in Kisumu Bankruptcy Cause No. 8/2014 which exempt her from participating in a Criminal or Civil litigation, and that the alleged debt the basis of the charge was incurred by Balm Kenya Foundation where she is the Executive Director and 3 other directors and an accountant. The application is supported by the affidavit of the Applicant who reiterates the grounds for the application and in particular depones that she has filed this application for the court to pronounce itself on whether having been granted receiving orders she should be exempted from Criminal or Civil litigation or other legal proceedings unless leave has been granted by the Bankruptcy Court.

The applicant filed Kisumu Hc. Bankruptcy Cause No. 8/2014 on seeking that a receiving order be made in respect of her estate as she had been unable to pay her debts. In the Petition she named 40 unsecured creditors whom she owed various amounts.

The applicant in he application seeks an order of this court to stop the proceedings in Sirisia SPMCR No. 229/2017 where she has been charged with the offence of obtaining by false pretence Contrary to Section 313 of the Penal Code. She contends that having obtained a receiving order in 2014, she cannot be charged as that order shields her from any prosecution.

The applicant in support of her application filed a copy of the debtors Petition dated 24.11.2014. List of names of unsecured creditors, and a Receiving order dated 16.12.2014. In the list of the 40 unsecured creditors there is no indication of any debt to Zaida Nelima Simiyu indicated. The receiving order, even if I have to find it sufficient, does not cover or relate to the matter subject to Sirisia Cr. 229/2017.

More importantly in my view, the process of bankruptcy is to enable a person to re-organize his finances where it has been demonstrated that he needs assistance of the Court to do so. In this case the applicant filed her petition in 2014 and obtained a receiving order. It is now almost 5 years, she has not gone back to the court to process her Petition. It will be an abuse of the court processes and clearly unlawful for applicant to use the order as a shield to her Criminal Proceedings. This court cannot allow the use of the receiving order to prevent due legal process, where as in this case it has been shown to be abused. In the premises I find no merit in this application and same is dismissed, with directions that Sirisia SPM CR. 229/2017 to proceed for Hearing and determination.

**Dated at Bungoma this 25<sup>th</sup> day of September, 2019.**

**S.N. RIECHI**

**JUDGE.**