



IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

INSOLVENCY CAUSE NO. E005 OF 2019

IN THE MATTER OF THE INSOLVENCY ACT

AND IN THE MATTER OF

JAMES MWANGI MACHARIA – A DEBTOR

BETWEEN

JAMES MWANGI MACHARIA.....APPLICANT/DEBTOR

AND

GERALD OCHOKI ALIAS MARUBE.....RESPONDENT/CREDITOR

RULING

1. The Debtor has moved the court under **section 23** of the *Insolvency Act, 2015* (“the *Act*”) seeking an order that execution in respect of the judgment delivered in **Bomet PMCC No. 61 of 2015**, the resultant decree and all consequential orders be stayed pending hearing and determination of this cause.

2. It is not in dispute that the Debtor was sued by Gerald Ochoki alias Marube who obtained a decree in his favour in **Bomet PMCC No. 61 of 2015** following his involvement in a road traffic accident while travelling in a vehicle belonging to the Debtor. As at 9th December 2016, the decretal amount was Kshs. 9,548,757.00 which continues to accrue interest. At the time he filed this insolvency petition, he had received a notice to show cause why he should not be committed to civil jail for failing to satisfy the decree.

3. The Debtor has invoked **section 23** of the *Act* which states as follows:

23(1) This section applies if an execution process has been issued by a court other than the High Court.

(2) If it is proved to the issuing court that an application for a bankruptcy order in respect of the debtor has been made to the High Court, that court may either –

(a) stay the execution on such terms as it considers appropriate; or

(b) permit the execution process to continue on such terms as it considers appropriate.

4. A plain reading of **section 23** of the *Act* shows that the provision applies where the execution process is issued by any other court other than the High Court. Further, the court empowered to stay any execution is the court that issued the process hence the use of the phrase “*issuing court*”. In this case the execution process was issued by the Bomet Magistrates’ Court and it is to that court that the Debtor must look to for relief.

5. For the reasons I have set out this application is incompetent and is hereby struck out.

DATED and DELIVERED at NAIROBI this 19th day of DECEMBER 2019.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

Mr Botany instructed by Lesinko Njoroge and Gathogo Company Advocates for the Debtor.

Mr Okemwa instructed by Okemwa Elijah and Company Advocates for the Creditor.