



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
INSOLVENCY CAUSE NO. 10 OF 2017
IN THE MATTER OF THE INSOLVENCY ACT, 2015
RE: RICHARD MWANGI MACHIRA - DEBTOR
RULING

[1] The Notice of Motion dated **21 November 2017** was filed herein under a Certificate of Urgency under **Sections 22 and 40** of the **Insolvency Act, 2015**, **Sections 1A and 3A** of the **Civil Procedure Act, Chapter 21 of the Laws of Kenya** and **Order 51 Rule 1 of the Civil Procedure Rules** for the following orders:

[a] That this application be certified as urgent and the Court be pleased to hear it *ex parte* in the first instance; (Spent)

[b] That the Court be pleased to issue an Order of Stay of execution of **Kajiado SPM Civil Case No. 7 of 2015: Gabriel Kimani Mwangi vs. Richard Mwangi Machira**, pending the hearing and determination of the application; (Spent)

[c] That the Court be pleased to issue an Order of Stay of Execution of **Kajiado SPM Civil Case No. 7 of 2015: Gabriel Kimani Mwangi vs. Richard Mwangi Machira**, pending the hearing and determination of the this Bankruptcy Petition;

[d] That the costs of the application be in the cause.

[2] The application was based on the grounds that the Petitioner has filed this instant Insolvency Petition; and that there is a Decree in **Kajiado SPM Civil Case No. 7 of 2015** in which he was required to show cause why he should not be arrested and committed to civil jail for failing to satisfy the Decree. It was the contention of the Applicant that he has no capacity to pay the decretal sum and that his committal to civil jail would merely serve to punish and humiliate him; and that the ends of justice would be met if the prayers sought herein as granted. The application was supported by the Applicant's affidavit sworn on **21 November 2017**, to which he annexed copies of the Notice to Show Cause dated **8 April 2016**, among other documents. That Notice to Show Cause shows that as at the date of its issuance, the Applicant owed the Decree Holder in **Kajiado SPM's Civil Case No. 7 of 2015 Kshs. 2,890,025/=**.

[3] Although the application was brought under **Section 22** of the Insolvency Act, that provision is specific to Petitions filed by creditors. It provides thus in sub-section (1):

"After a creditor's application has been made, the debtor or any creditor may apply to the relevant court for an order stopping the issue or continuance by any other creditor of an execution process against the debtor in respect of the property of the debtor."

[4] In any event, the relevant court, for purposes of **Section 22(1)** of the **Insolvency Act** would be Kajiado SPM's Court, granted the definition thereof in **Section 2** of the **Insolvency Act**. That definition is to the effect that:

"relevant court" in relation to a matter other than one that is specifically entrusted to the High Court by a provision of this Act, means the court exercising or having responsibility for exercising jurisdiction in respect of that matter."

[5] It is apparent therefore that the application is misconceived. Indeed for the purposes of a Debtor, it is sufficient that a Bankruptcy Order be issued, for **Section 48** of the **Insolvency Act** recognizes that:

"(1) When a bankruptcy order commences--

(a) all proceedings to recover the bankrupt's debts are stayed; and

(b) the property of the bankrupt (whether in or outside Kenya), and the powers that the bankrupt could have exercised in respect of that property for the bankrupt's own benefit, vest in the Official Receiver."

[6] In **In re Akbarali Karim Kurji (Debtor) [2017] eKLR** this Court came to the same conclusion and held that:

"As to whether an order of stay can issue before the making of a bankruptcy order, the Respondents cited Sections 41 and 48(1)(a) of the Insolvency Act to support their argument that it is only when a bankruptcy order commences that proceedings to recover the bankrupt's debts can be stayed. I would agree entirely with the Respondents' argument granted the provisions of Section 48(1)(a) that:

"When a bankruptcy order commences all proceeding to recover the bankrupt's debts are stayed."

So that, it is no longer necessary to file an interlocutory application for stay along with a petition for bankruptcy as used to be the case under Section 11 of the repealed Bankruptcy Act, Chapter 53 of the Laws of Kenya."

[7] For the foregoing reasons, it is my resultant finding that the Notice of Motion dated is devoid of merit and the same is hereby dismissed, but with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF DECEMBER, 2017

OLGA SEWE

JUDGE