



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Law Courts)

Bankruptcy Cause 23 of 2007

RE: ELIZABETH MWIKALI KITHUKA

RULING

1. On 12 March 2007, my learned brother **Waweru J.** ordered that a Receiving Order should issue against the estate of the above Debtor. This was based on the Petition of the Debtor herself dated 19 January 2007. On the ninth of July 2010, **Njagi J.** (as he then was) heard the Petition but did not deliver a Ruling thereon. On that day, the Debtor herself was examined-in-chief by **Mrs. Koech** for the Official Receiver, as well as being cross-examined by the Court, **Grace Kamene**, a creditor and **Stephen Mbuvi Mulwa**, another creditor. The Debtor was then re-examined by Mrs. Koech.

2. The Debtor gave evidence that she was a peasant farmer growing beans and maize on a plot of about 1 acre in Mumandu. She stated that her husband, who was now deceased, was in the matatu business. After he died, he sold the 2 vehicles involved in the business in 2002. She received Shs. 1,600,000/- for the vehicles and divided the sale proceeds therefore amongst 2 of her daughters giving Shs. 400,000/- to her daughter Veronica in 2003 and Shs. 200,000/- to her daughter Betty. With the balance, she built a residential house on the said plot. She owed Shs. 300,000/- to one **Francis Maitha Kioko** which she paid in 2003. She did not know the creditor **Josephine Munuve** but she did know that he had been paid Shs. 215,000/- by Invesco Insurance Company Ltd. She did not know either Grace Kamene or Stephen Mbuvi Mulwa. They had filed suits against her arising out of an accident relating to Datsun 1200 pick-up Reg No. KAB 246W. That vehicle had belonged to her late husband she transferred it into her own name when he died. She went on to give evidence that the plot on which she lived was not registered in her name but in the name of one **Kilile** who had sold it to her husband. She testified that she had no monies to pay either Grace Kamene or Stephen Mbuvi. She was being assisted financially by her 2 daughters as above. Her other daughter, Kanini, lived with her husband and her married son Mutangili Mwanja worked with Portland Cement at Athi River. She prayed for the Court to declare her bankrupt.

3. Upon cross-examination, the Debtor detailed that her daughter Veronica was 36 years old and her daughter Betty was 31 years old, both unmarried. She noted that she had no means of paying Grace Kamene in that she had no vehicle which was on the road as she had sold the matatu which her husband had owned and she had no other vehicle that had belonged to her husband, whose address was care of P. O. Box 41 Athi River, which was used by many other people. She denied that the spare parts shop in Kitui belonged to her – it was owned by her daughter Veronica. On re-examination, the Debtor produced a single Business Permit in relation to the spare parts shop in Kitui in the name of her daughter, Veronica. She also informed the court that Box No. 41, Athi River belonged to two others apart from her husband. She went on to say that the vehicle (presumably the Datsun pick-up) was involved in an accident (she did not say when) at the time being driven by a driver. The vehicle was insured by Blue Shield Insurance Company and after she had been informed of the accident, she reported the same to the Insurance Company as well as the Police at Kitui. The insurance company had disclaimed liability as the vehicle was not insured for carrying passengers.

4. I have considered the evidence given before Court by the Debtor. It is apparent to me that the Debtor has few, if any, assets. This is one of the unfortunate cases where a vehicle involved in an accident has not been covered by insurance, even Third Party insurance. Upon the Insurance Company rescinding any liability for third party claims arising out of the accident to the vehicle, the victims have sought redress against the owner of the vehicle being the Debtor herein. The Debtor is unable to pay. In all the circumstances therefore, I declare the Debtor bankrupt. It would be as well if the Official Receiver, who I now appoint as the Debtor's trustee, would investigate the position with regard to the title to the plot upon

which the Debtor resides. If it was sold to the Debtor's husband then why was the parcel of land never transferred into the husband's name? The Debtor, the widow, would at least have a life interest in the same. There may also be a possibility of the land being sold off and the creditors being paid. Order accordingly.

**DATED and delivered at Nairobi this 17<sup>th</sup> day of May, 2013.**

**J.B. HAVELOCK  
JUDGE**