



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & TAX DIVISION**

**BANKRUPTCY CAUSE NO. 126 OF 2003**

**PETER NDEGWA WAWERU .....PETITIONER**

**AND**

**IN THE MATTER OF BANKRUPTCY ACT CHAPTER 53 LAWS OF KENYA**

**JUDGMENT**

Under a debtor's petition presented to this Court on 6<sup>th</sup> October 2003, PETER NDEGWA WAWERU has petitioned this court to adjudge him bankrupt on the ground that he is unable to pay his debts, particularly as demanded by three unsecured creditors, JOSEPH MWANIKI, BENARD MAINA KURIA, and ELIZABETH WANJIKU KAMAU all of them decree holders in respect of successful personal injury claims against the Petitioner in **CMCC NO-S 1538 OF 2002, 56 OF 2003, and 512 OF 2003** respectively.

Subsequent upon the court satisfying itself that an act of bankruptcy in the matter of the petitioner had been committed upon his presentation of a bankruptcy petition against himself as above, and the Official Receiver having no objection to a Receiving Order being made, the same was issued by the court on 15<sup>th</sup> October 2003, subsequent to which, the Official Receiver applied to have the debtor publicly examined on oath as to his affairs and inability to pay his creditors. The public examination was conducted on 5<sup>th</sup> November, 2010 in the absence of the three named unsecured creditors, who, despite having been served with the hearing notice did not attend court. The debtor testified that

1. He was unemployed and owned no land or property.
2. That he lived with his wife, who is a small scale farmer
3. That although he had fathered five children, his first born son unemployed and his second born is a

casual labourer, his third born and fourth born children are in secondary school and he is not able to pay their school fees. His sister and mother have taken up that responsibility. The last child is in primary school under the free education scheme.

4. That prior to his filing this petition he was a maize dealer. The business collapsed due to drought. He also had bought a Toyota Pick – up and employed a driver to ferry fare paying passengers between Nakuru and Kiambogo.

5. That the creditors herein sued him in respect of injuries sustained by them while traveling as fare paying passengers in an accident involving the said vehicle, registration No. KAT 949D

6. That he had bought the said motor vehicle under a partnership loan which he was paying by instalments. The vehicle was extensively damaged in the accident and the debtor was unable to meet the cost of its repairs, leading him to seek the assistance of a friend. Once repaired, the vehicle was sold and the proceeds thereof applied towards repaying the loan.

7. That he has no assets and no means at all by which he could liquidate his debts.

8. That he was involved in an accident which left him permanently incapacitated and unable to work. He sees no prospects at all by which he can pay his creditors since he cannot even take care of himself or his family

The creditors did not attend to cross examine the petitioner and the public examination is deemed to have concluded at the end of the proceedings of 5<sup>th</sup> November, 2010. There having been no proposal for composition in satisfaction of the debts, or a scheme of arrangement of the debtors' affairs ever made, as would have necessitated a meeting of creditors, the court considers that a case for a bankruptcy order has been made out in the circumstances, being satisfied that the statements made in the petition are true, and the debts upon which the petition is founded have not been paid, or secured or compounded for. Consequently, I now make orders as follows:

**1. That Peter Ndegwa Waweru be and is hereby adjudged bankrupt**

**2. The Official Receiver be and is hereby appointed Trustee in Bankruptcy in respect of adjudged bankrupt's estate.**

**3. The bankrupt shall apply for a discharge after 5 years from the date of this order.**

**DATED, SIGNED and DELIVERED at NAIROBI this 17<sup>TH</sup> day of FEBRUARY, 2011.**

**M. G. MUGO**

**JUDGE**

In the presence of:

Ms Mugo

For the Official Receiver

No Appearance

Debtor

No Appearance

Creditor