

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION – MILIMANI

BANKRUPTCY CAUSE NO. 8 OF 2008

IN RE CHARLES NDERITU WANJAGI – DEBTOR

R U L I N G

By a Petition dated 5th February, and filed in Court on 14th February, 2008, the debtor prays that being unable to pay his debts, a receiving order be made in respect of his estate and that he be adjudged bankrupt.

The petition is supported by a verifying affidavit sworn by the Petitioner on 5th February, 2008. It is based on the grounds that **NYERI CMCC NO. 644 OF 2002, PETER NDERITU RUGONGO v. PATRICK NDUNGU & CHARLES NDERITU WANJAGI** was filed by the Plaintiff against the Defendants, one of whom included the debtor herein, following a road traffic accident on 3rd September, 2000. The accident involved motor vehicle Reg. No. KAH 312V which the debtor was driving at the time of the accident. After the accident, several passengers filed civil cases for compensation against the Petitioner and his employer, Patrick Wambugu, and Nyeri **CMCC NO. 644 OF 2002** was one of those cases.

The United Insurance Co. Ltd., which was the debtor's employer's insurer at the material time, took up the matter on behalf of the Petitioner and instructed some Advocates to represent him. On 15th July, 2004, the said Insurance Company was placed under Statutory Management and it suspended its operations. Consequently, the claims which the Insurance Company would have paid on behalf of the debtor were not paid. The Advocate for the Plaintiff thereafter pursued the case against the debtor and committed the latter to civil jail for an outstanding amount of over Kshs.500,000/= which was beyond the debtor's ability to pay. He avers that he is completely unable to pay the debt arising out of the claim.

In his public examination, the debtor cut out a very poor picture of himself. He admitted owing the Plaintiff in **NYERI CMCC NO. 644 OF 2002** the sum of Kshs.502, 935/=. He also said that from time of filing the petition in February, 2008, he had not paid the Plaintiff anything. He further admitted that in his statement of affairs, he had indicated that he had Kshs.20, 000/= in the Bank, Kshs.5, 000/= at hand, and that he had deposited Kshs.20, 000/= with an Advocate for the costs of the Petition. This money was, however, not from his personal resources but had been raised by his relatives after organizing a harambee. He did not make arrangements to have another harambee because his relatives don't earn any money and it would have been futile to do.

The debtor further told the Court that he had been employed as a driver by Patrick Wambugu and that he used to be paid Kshs.200/= per day. Since the date of the accident, he did not work as a driver anymore. Instead, he lives at Endarasha in a small house built of timber for which the rent is Kshs.300/= per month. His wife cultivates on his father's shamba which is about 7 acres in total and on which she farms on ½ an acre. The rest of the shamba is cultivated by nearly 10 other people.

The debtor and his wife have 3 children, the first two of whom are in primary school and the last one is in nursery school. It is his wife who pays the children's fees and also meets all the extras over and above school fees. He emphasized that he had no means with which to pay his debt and asked to be declared bankrupt.

I find the debtor to be a very strange person. He does not want to do anything but only to eat and

sleep. He doesn't look for any money either to sustain himself and his family, or to house, clothe and feed his family, and all these chores are left to his wife. It is a crying shame that an able bodied man should wake up in the morning, laze around the market place, and come back home in the evening to eat and sleep without bothering to cater for his own family day in, day out without bothering to cater for his own family. He is not even ashamed of telling the Court that it is his wife who goes round looking for casual jobs in order to pay for the rent, to educate their children and feed the family. Such assertions are too comical to be taken seriously. To pursue the likes of the debtor were awakened to appreciate their responsibilities to themselves, their families and to the society as a whole. As it he doesn't want to do any work and doesn't want to discharge his liabilities.

We don't know the circumstances under which the accident in question occurred. But it is certain that the debtor was adjudged by the court to pay sum Kshs 502,935/-. It can only mean that someone sustained some serious injury in that accident. Unfortunately the insurance which would have bailed out the debtor went under. And yet, he does not seem to be unduly perturbed by the fact that his conduct was probably the cause of the accident in which someone might have suffered some serious injuries. Yet, he still assumes a happy-go-lucky attitude.

On account of the foregoing, I am not satisfied that this court is in possession of all the relevant facts relating to this debtor. I accordingly make the following orders –

1. **The Official Receiver is hereby directed to obtain and file an investigation report on the affairs of the debtor within three months from today.**
2. **Mention on 6th May, 2011, to confirm compliance.**
3. **Mention Notices to issue.**

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this 4th day of February, 2011.

L. NJAGI

JUDGE