



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL COURTS

BANKRUPTCY CAUSE NO. 104 OF 2004

CALTEX OIL (K) LIMITED.....PLAINTIFF/CREDITOR

- VERSUS -

ONESMUS KIMANI NGUNJIRI.....DEFENDANT/DEBTOR

RULING

Before me is a Petition made to this court by the Creditor against the Debtor for a Receiving Order in respect of the Debtor. The application is dated 14th May 2004 and attached to it are the Bankruptcy Notice dated 27th November 2002 issued to the Debtor by the Deputy Registrar of the court, and Endorsement on Notice by M/s Mohamed & Muigai Advocates for the Creditor.

The Petition is supported by the Decree dated 22nd June 2001 issued by the Deputy Registrar; a Certificate of Taxation dated 13th September 2001 and the Judgement dated 16th May 2001 for a sum of Kshs.3,882,514.

The Petition is supported by grounds stated on the face of the Petition viz;

- 1. That the said Debtor Onesmus Kimani Ngunjiri has within the period of one year preceding the presentation of this petition resided at Nakuru.*
- 2. That the said Debtor Onesmus Kimani Ngunjiri is indebted to the Petitioner in the aggregate sum of Kshs.4,284,593.85 being the amount due on a final judgement or order obtained by the Petitioner against the said Debtor in High Court Civil Case No. 689 of 2000 [Onesmus Kimani Ngunjiri –Vs- Caltex Oil (Kenya) Limited].*

3. That the Petitioner does not, nor does any other person on their behalf hold any security on the said Debtor for the payment of the said sum.

4. That the Debtor Onesmus Kimani Ngunjiri within three months before the date of the presentation of this petition has committed the Act of Bankruptcy.

The Bankruptcy Notice was served on the Debtor on 13th November 2003 and the Debtor has failed and or is unable to pay, liquidate and or discharge his indebtedness to the Petitioner.

The firm of Wetangula & Company advocates has appeared and represented the Debtor and indications on record are that the parties have been negotiating a settlement and/or proposals for payment.

On 22/10/2010 M/s Ogula counsel for the Debtor requested for two weeks within which the Debtor would make proposals for settlement and the court ruled that the matter be mentioned on 5/11/2010 to confirm whether the Debtor would have made a proposal to the Petitioner's advocates failing which a Receiving Order to issue.

Mr. Imende counsel for the Petitioner submits that they have since not received any proposals for payment or settlement, causing them to issue a notice for the mention of the matter on 26.10.2011. That notice was served on the firm of Wetangula & Company Advocates on 7th October 2011.

Affidavit of service sworn by Mr. Lawrence Gichara and dated 25th October 2011 is filed in court. In spite of the said service the said firm of advocates did not attend the mention. The orders of the court on 22/10/2010 is clear, and in my view, failure to attend must mean that they or the Debtor have no proposals for payment. This being so, the Petitioner's counsel submits, a Receiving Order should issue.

Quite, apart from the foregoing, I have considered the entire application and supporting documentation. I have also considered that this is a matter which has taken far too long to conclude, and in view of the fact that the Petition is not opposed, it is my view that it is appropriate to grant to the Petitioner the Receiving Order against the Respondent in accordance with Section 7 (2) of the Bankruptcy Act.

In the upshot, I grant the orders as prayed in the Petition.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI THIS 27TH DAY OF OCTOBER 2011.

E. K. O. OGOLA

JUDGE

PRESENT:

..... FOR PLAINTFF

..... FOR DEFENDANT

IRENE – COURT CLERK