

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

BC NO. 3 OF 2011

GERMANO NJAGIDEBTOR

VERSUS

IN THE MATTER OF THE BANKRUPTCY ACT.....PETITIONER

RULING

Before me is a Notice of Motion dated 22nd August 2011 brought under Section 11 (1) of the Bankruptcy Act and Rule 144 of the Bankruptcy Rules. It seeks an order of stay of proceedings of Meru HCCC No. 144 of 1998. The Application is supported by the Affidavit of Germano Njage M'nubi sworn on 22nd August, 2011.

The grounds for the application which appear on the body of the application is clear that there exists a judgment in the said **HCCC No. 144 of 1998 between Garvasio Njeru Kathanya –vs- Ndiki Munene & Another** for a total sum of Kshs.750,520/-. The said suit arose out of a road traffic accident by the applicant's motor vehicle registration no. **KAG 385M** whose insurer, Stalion Insurance Company Ltd., has since gone under. The court notes that, it is for the reason that the Applicant is unable to pay his debts that he commenced these bankruptcy proceedings.

I am satisfied that there exists Meru HCC No.144 of 1998 wherein execution may be levied against the Applicant whilst the proceedings herein are pending. If those proceedings are not stayed as sought, the Petitioner (the applicant), may very well find himself in an awkward position wherein execution proceedings may be undertaken in that suit against him whilst the bankruptcy proceedings herein are pending on the other hand. It is for this reason that Section 11(1) of the Bankruptcy Act Cap 53 was enacted. The said section provides:-

“The court may, at any time after the presentation of a bankruptcy position stay in action execution or other legal process against the property or person of the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.”

In view of the foregoing, I am satisfied that Meru HCCC No 144 of 1998 should be stayed, and I accordingly allow the Notice of Motion dated 22 August 2011 as prayed.

Dated and delivered this 28th day of November, 2011.

JUSTICE A. MABEYA