



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI COMMERCIAL COURTS)

BANKRUPTCY CAUSE NO. 45 OF 2002

RE: SILVANUS KIMEU YULU-DEBTOR

RULING

On 8th May, 2002 **Silvanus Kimeu Yulu**, the Debtor, petitioned this court for a receiving order, in respect of his estate, having stated that he is unable to pay his debts. He sought to be declared bankrupt. A Receiving Order was issued on 10th May, 2002. Pursuant to **Section 11** of the **Bankruptcy Act Cap 53** stay of all actions, execution or other Civil Legal Process against the debtor's property was ordered.

Subsequently the Receiver applied for an order appointing a sitting for public examination of the debtor. On 8th August, 2011 the debtor was served with a notice for the public examination which was scheduled to take place on 4th November, 2011 but the debtor did not attend court.

Mr. Adera for the Official Receiver told the court that during the last meeting with the debtor held on 18th January, 2011 the debtor had not offered any settlement proposal in respect of a decretal sum amounting to **Kshs.1,006,965/=** ordered to be paid by him in **HCCC No. 2653 of 1994** at **Machakos**. Mr. Adera urged the court to rescind the Receiving Order.

Section 100 of the **Bankruptcy Act** states as follows:

“100. (1) Subject to the provisions of this Act, the court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or of fact, which may arise in any case of bankruptcy coming within its cognizance, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Where default is made by a trustee, debtor or other person in obeying any order or direction given by the official receiver, the court may on the application of the official receiver order the defaulting trustee, debtor or person to comply with the order or directions so given; and the court may also, if it thinks fit upon any such application, make an immediate order for the committal of

the defaulting trustee, debtor or person:

Provided that the power given by this subsection shall be in addition to and not in substitution for any other right or remedy in respect of the default.”

In the circumstances of this application, I am of the view that the ends of justice would be well served by lifting the Receiving Order since the debtor has failed to attend court for public examination, having also failed to make any proposal for settlement of his debt.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF NOVEMBER, 2011.

D. MUSINGA
JUDGE

In the presence of:
Muriithi – Court Clerk
Miss Oyugi for Official Receiver