

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

Bankruptcy Cause 54 of 2005

IN THE MATTER OF ABDI DESI ALI – A DEBTOR

R U L I N G

The debtor filed a petition before this court seeking to be declared bankrupt. According to his petition, the debtor averred that he was unable to pay his debts hence his petition to the court for a receiving order to be made in respect of his estate. In his verifying affidavit in support of the petition, the debtor states that he was the registered owner of motor vehicle registration No.KAJ 830 K which he operated as a Public Service Vehicle. The motor vehicle was involved in an accident on 23rd July, 2001 whereby several passengers were injured. The injured passengers filed suit against the debtor seeking to be compensated. The motor vehicle was insured by United Insurance Company Ltd. The insurance company was placed under Statutory Management after it failed to pay claims on behalf of its insured. The debtor was a victim of the insurance company being placed under Statutory Management. The injured passengers, who had obtained various judgments against the debtor, sought to attach the debtor's property to recover the amounts decreed in their favour. According to the debtor, other than the motor vehicle which was bought for him by his father, he did not have any other property. This court issued an interim receiving order on 27th July, 2005.

On 2nd February, 2010 this court conducted the public examination of the debtor. None of the creditors of the debtor appeared in court. The debtor adduced oral evidence. He urged the court to declare him bankrupt since they were still some creditors who were still pursuing him. He told the court that he did not have any property and was dependent on casual work to take care of his wife and two children. He confirmed that none of the creditors had attended the creditors meeting called by the official receiver. The creditors did not file any proof of debt forms. The debtor told the court that he was afraid that he would be harassed by the creditors if the court did not declare him bankrupt.

Mrs. Wainaina for the official receiver told the court that there was no proof that the debtor was being harassed by the creditors. She urged the court to rescind the receiving order. This court has considered the debtor's petition. It has also considered the oral evidence adduced by the debtor in court. From the evidence adduced, it was clear that since the debtor was issued with an interim receiving order, the creditors have ceased pursuing the debtor for the awards that were made in their favour by the various courts. The debtor told the court that he did not have any assets which he could use to settle the amounts due to the creditors. He told the court that he relied on casual work to maintain himself and support the members of his family. Having evaluated the facts of this case, it was apparent that the debtor is an undischarged bankrupt. He cannot pay his creditors. He lacks the means or wherewithal to pay his creditors. The court will therefore allow his petition to be declared undischarged bankrupt.

The public examination of the debtor disclosed that indeed the debtor has no capacity to pay his creditors. The debtor has no property which can be vested upon the official receiver to manage with a view to reaching an arrangement with the creditors for the settlement of their debts. This court was convinced that the debtor ought to be adjudged bankrupt on his own application. There shall be no orders as to costs.

DATED AT NAIROBI THIS 28TH DAY OF MAY, 2010

L. KIMARU

JUDGE