

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

Bankruptcy Cause 43 of 2004

IN THE MATTER OF PAUL MUTISYA MUTWII – A DEBTOR

R U L I N G

The debtor filed a petition to this court seeking to be declared bankrupt on the basis on the fact that he was unable to pay his debts. The debtor urged the court to issue a receiving order in respect of his estate. He further prayed that the court issues an order staying all executions against him. In his petition, the debtor deponed that he was the owner of motor vehicle Reg.No.KAJ 358 H which he used to operate as a public service vehicle. The motor vehicle was then insured by United Insurance Company Ltd. The motor vehicle was involved in an accident. Several passengers were injured. Eighteen of the injured passengers filed suit in various subordinate courts and duly obtained judgment in their favour. According to the debtor, although the insurance company was notified of the accident, and although the debtor had informed the Insurance company of the judgments, the insurance company had failed to settle the claims. The insurance company was subsequently thereafter placed under statutory management. The claimants had therefore sought to execute the judgments entered in their favour against the debtor. It was in that regard that the debtor came to court seeking protection by having the court issue a receiving order in respect of his estate. In essence, the debtor was pleading that he had no resources to settle the various decrees that had been issued against him resulting from the accident involving his motor vehicle.

An interim receiving order was issued by this court on 5th April, 2004. According to the debtor, several creditors' meetings were called by the official receiver but the creditors failed to attend the meetings. During public examination, it emerged that the debtor had failed to disclose all his assets as required by the law. The debtor was therefore not candid with the court. When the debtor submitted himself to the jurisdiction of this court, he was required to provide a list of all his assets and a list of all his creditors. By failing to disclose his assets, it was apparent that the debtor was using the court process to defeat the claims due to his creditors. In the several meetings that were held between the debtor and the official receiver, the debtor did not make any reasonable proposal on how he intends to settle the debt due to the creditors. Upon evaluating the facts of this case, it was evident to the court that the debtor was not honest in his petition. Once the court forms an opinion that a debtor has been less than candid in his petition to the court, the court has no option but to disallow the petition. Mrs. Wainaina for the official receiver urged the court to lift the receiving order since, as was clear from the public examination, the debtor was a man of means who had failed to come up with reasonable proposals on how he intended to settle the creditors' claims. I agree with the position taken by the official receiver.

The debtor's petition seeking the court to declare him bankrupt is hereby disallowed. The debtor was not candid in his petition. His failure to disclose his assets disentitles him to a favourable exercise of discretion by this court. The debtor was unwilling to make any proposals to the official receiver in regard to how he intends to settle the debt that he owes to his creditors. His petition is hereby dismissed with costs to the official receiver. The receiving order issued by this court on 5th April, 2004 is hereby rescinded. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF MAY, 2010

L. KIMARU

JUDGE