



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**COMMERCIAL & TAX DIVISION**  
**BANKRUPTCY CAUSE NO.45 OF 2008**

**DANIEL MATHENGE RUTHI.....PETITIONER**

**AND**

**IN THE MATTER OF BANKRUPTCY ACT CHAPTER 53 LAWS OF KENYA**

**JUDGMENT**

Under a debtor's petition presented to this Court on 7<sup>th</sup> August 2008, DANIEL MATHENGE RUTHI has petitioned this court to adjudge him bankrupt on the ground that he is unable to pay his debts, particularly as demanded by four unsecured creditors, HELLEN WAIRIMU MICHAEL, PATRICK MWANGI THUO, JACKSON KIMANI MAINA and STEPHEN WANYOIKE NDUNGU all of whom hold decrees in respect of successful personal injury claims in **CMCC NO-S 846 OF 2003, 847 OF 2003, 848 OF 2003 AND 850 OF 2003** respectively.

Subsequent upon the court satisfying itself that an act of bankruptcy in the matter of the petitioner had been committed upon his presentation of a bankruptcy petition against himself as above, and the Official Receiver having no objection to a Receiving Order being made, the same was issued by the court on 21<sup>st</sup> January 2008, subsequent to which, the Official Receiver applied to have the debtor publicly examined on oath as to his affairs and his inability to pay his creditors. The public examination was conducted on 19<sup>th</sup> November, 2010 in the presence of the four named unsecured creditors, wherein the debtor testified that:

1. He was unemployed and owned no land or property.
2. That he lived with his wife, who is a vegetable vendor on a piece of land given to him by Kihui Mwiri Society.
3. That although he had fathered six children, his first born son is now deceased and his two daughters

are married while his third daughter is an aids survivor, living with him, together with her son who is also H.I.V. Positive.

4. That none of his children are schooled beyond class 8 of Primary School.
5. That prior to his filing this petition he was a casual labourer and has been diabetic since 2002.
6. That the creditors herein sued him in respect of injuries sustained by them as fare paying passengers in an accident involving a public service vehicle that the debtor operated between Thika and Nairobi.
7. That he had bought the said motor vehicle under a partnership loan from the co-owner – Michael Aura, who repossessed and sold the vehicle after the accident, without refunding the debtor's contribution of Kshs 300,000/=, paid towards the agreed purchase price of Kshs 500,000/=
8. That he has no assets and no means at all by which he could liquidate his debts.
9. That owing to his severe diabetes, the debtor is apprehensive that, should his creditors push for an order that he be committed to civil jail, in execution of the decrees in the above –noted suits, then his chances of survival would be almost nil.

The creditors did not wish to cross examine the petitioner and the public examination is deemed to have concluded at the end of the proceedings of 19<sup>th</sup> November, 2010. There having been no proposal for composition in satisfaction of the debts or scheme of arrangement of the debtors' affairs ever made, as would have necessitated a meeting of creditors, the court considers that a case for a bankruptcy order has been made out in the circumstances, being satisfied that the statements made in the petition are true, and the debts upon which the petition is founded have not been paid, or secured or compounded for. Consequently, I now make orders as follows:

1. **That Daniel Mathenge Ruthi be and is hereby declared bankrupt**
2. **The Official Receiver be and is hereby appointed Trustee in Bankruptcy in respect of the adjudged bankrupt's estate.**
3. **The bankrupt shall apply for a discharge after 7 years from the date of this order.**

**DATED, SIGNED and DELIVERED at NAIROBI this 17<sup>TH</sup> day of DECEMBER, 2010.**

**M.G. MUGO**

**JUDGE**

In the presence of:

Mr. Mogere  
Mr. Daniel Mathenge Ruthi  
All four Creditors

For Official Receiver  
Debtor  
Present