

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Bankruptcy Cause 107 of 2004

BENEDICT MUTIA MWOVA.....PLAINTIFF

VERSUS

IN THE MATTER OF BANKRUPTCY ACTDEFENDANT

R U L I N G

This is a Bankruptcy matter under **Section 11 (1), 100 (1), 103 (1) and 133 Bankruptcy Act and Rule 15 of Bankruptcy Rules**. The orders sought by the debtor are:-

- 1. Reinstatement of receiving order against the estate of debtor;**
- 2. That this court be pleased to stay execution or any legal process against the property of the debtor and that the court's ruling dated 15/5/2009 be set aside and that applicant be adjudged bankrupt on the grounds that the business which applicant was doing by the time of signing the consent letter dated 27/11/07 has since become unable to raise any money and the applicant is affected by general economic depression existing.**

The creditor, Associated Motors Ltd. was represented at the hearing of

this motion. It opposed the application and relied on the affidavit sworn by Ranzan Jamal on 24/7/2009.

The applicant/debtor addressed the court and disclosed that he has a contract job and has orders to deliver building stones to 2 secondary schools and promised that within 60 days he will be able to pay Kshs.50,000/=. Within first 30 days he shall pay Kshs.25,000/= and the balance he shall pay within the following 30 days. He would like to change the consent and pay Kshs.10,000/= per month.

The creditor told the court that the debt has been reduced to Kshs.500,000/=. The debtor made consent and what he is saying now he said before Hon. Justice Mwilu. Judge Mwilu rescinded the Receiving Order. The creditor opposed the application saying that the debtor's behaviour is unreasonable. His application has no basis.

Ms. Wainaina appeared for the Official Receiver. She addressed the court saying she has nothing to say; "I leave the matter to court." The court has considered the application and perused the ruling made by Hon. Judge Mwilu that Judge found that the debtor defaulted even after he entered into consent order. It is the same story now the debtor asks court to change the terms of the order and promises to pay in the new installments of Kshs.10,000/=.

The creditor is opposing the consent. The law is that consent cannot be varied without a consent of the parties. It is clear the debtor is misusing the process of bankruptcy proceedings to avoid settling his debts.

I do not find any reason to reinstate the Receiving Order. The application is dismissed with costs to the Official Receiver.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 21st day of October 2009.

JOYCE N. KHAMINWA

JUDGE