

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Bankruptcy Cause 4 of 2006

RE: GEDION KALOTHI M'MUKUTHURA

EX-PARTE: GEDION KALOTHI M'MUKUTHURA

RULING

A suit has been filed in the Chief Magistrate's court at Meru, being Civil Suit No. 725 of 2004 against the applicant for general and special damages arising from a motor accident. The applicant has filed a defence denying liability. He has, in the meantime brought the instant application together with a petition seeking that the court issues a receiving order.

The application to which this ruling relates has been brought pursuant to section 11(1) of the Bankruptcy Act. It seeks an order to stay Meru CMCC No. 725 of 2004 on the grounds that in the said Meru CMCC No. 725 of 2004, the plaintiff is seeking over Kshs. 500,000/= yet the applicant is unable to pay his debts. That his motor vehicle which was involved in the accident in question was written off as a result thereof and that it was covered by United Insurance Company, now under receivership.

Section 11 of the Bankruptcy Act under which the application is brought provides that:-

“11(1) The court may, at any time after the presentation of a bankruptcy petition, stay any action, execution or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.”

In terms of section 97 of the Bankruptcy Act jurisdiction in bankruptcy matters, as a general rule is vested in the High Court. The High court, therefore pursuant to the provisions of section 11(1) of the Act can stay any action or execution or other legal process against the property or person of the debtor so long as the petition for bankruptcy has been presented.

The court (either High Court or subordinate court) seized of the proceedings against the debtor may also stay those proceedings on being satisfied that the petition has been presented.

Section 11 of the Act envisages a situation where there is an imminent threat either to the person of the debtor or his property. From the annexures it is apparent that apart from the filing of the plaint and defence no other steps have been taken. The suit is pending hearing yet the applicant is able to predict the award of Kshs. 500,000/=.

Courts do not act in vain. A stay will serve no purpose as the outcome of the suit cannot be predicted.

For these reasons, the application must fail and is dismissed. I make no orders as to costs.

Dated and delivered at Meru this 3rd Day of June 2008.

W. OUKO

JUDGE