

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU

Bankruptcy Case 33 of 2006

IN THE MATTER OF THE BANKRUPTCY ACT CAP 53 OF THE LAWS OF KENYA

AND

**IN THE MATTER OF GUADSON KIRAGU KARANI – EXPARTE THE
DEBTOR**

RULING

By a Petition filed herein on the 6th December 2006, the debtor Guadson Kiragu Karanu a businessman in Bungoma District Western Province applied and was granted a receiving order on 1st February 2007 respecting his estate. His application was based on the fact that his business involved Motor Vehicle passenger transport and in that regard he possessed two public service vehicles Registration number KAA 449K and KAC 214 A which were involved in road accidents on the 7th April 1995 and 4th August 1997 respectively. As a result, passengers travelling in the said vehicles filed personal injury claims in various court.

Judgments amounting to the sum of Kshs. 1,900,162 were entered against him but could not be made good by his insurer United Insurance Company Limited which had been placed under receivership. He could not satisfy the judgments and was unable to pay his debts. He therefore applied for the receiving order which he now seeks to rescind vide his application dated 5th September 2008.

The application is based on the grounds contained in the body of the appropriate Chamber Summons dated 5th September 2008 and supported by the facts contained in the supporting affidavit deponed by the debtor /applicant.

Mr. Odeny for the applicant indicated in his submissions that the applicant had sought the receiving order to protect himself against execution of the judgments obtained against him since his insurer had been placed under receivership. Paragraph 5 of the supporting affidavit shows that the protection is no longer necessary due to the ruling of the court in the case of **Kensilver Express Ltd and others =vs= the Comm of Insurance & others NBI HC MISC CIVIL SUIT NO. 1345 OF 2005** to the effect that no judgment debtor should be subjected to civil jail in respect of claim arising out of vehicles insured by United Insurance Company Limited.

Further the creditors were directed to seek compensation for their claims from the policy holders compensation fund established under the Insurance Act Cap 457. (See paragraph 6 of the supporting affidavit). Mr. Odeny echoed the applicant's allegation that the existing receiving order has made it impossible to prosecute civil cases at Bungoma in which the applicant is a party (Paragraph 7 of the supporting affidavit refers). Therefore the applicant does not consider himself a debtor any longer and applies for the rescinding of the material receiving order and for the gazetting of the rescinding order by the official receiver. It is note worthy that the official receiver was duly served with the application but did not file any response and/or appear for the hearing.

A consideration of the application aid the undisputed facts in support thereof renders it meritable. In addition it is noted that on the 6th November 2007 the applicant filed a notice of motion to have his

petition withdrawn on the basis of similar grounds advanced in this application. The application was granted on 14th November 2007 by Mwera J. However, the receiving order issued on 1st February 2007, was not rescinded and hence the present application which must in any event be granted to the extent that the receiving order made against the applicant / debtor on 1st February 2007 be and is hereby rescinded and that the official receiver do hereby gazette the rescinding order.

Ordered accordingly.

Dated, signed and delivered at Kisumu this 18th day of September 2008.

J. R. KARANJA

JUDGE_