

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

Bankruptcy Cause 17 of 2007

IN THE MATTER OF BANKRUPTCY CAUSE

A N D

RE: NAVINDRA RAMJI SHAH – DEBTOR

R U L I N G

On 27th February 2007, Navindra Ramji Shah T/A Joint General Supplies and Distributors filed a Debtors petition under the Bankruptcy Act for a receiving order to be made in respect of his estate. A certificate of compliance duly signed by the Official Receiver was filed on 5th March 2007 and a Receiving order duly signed by the Deputy Registrar on 9th March 2007.

On the 12th March 2007, the Debtor filed a notice of motion through the firm of E. M. Obonyo and Company Advocates seeking to have the Debtor released from Civil Jail where He was committed on 9th March 2007 on the grounds that his continued incarceration in the face of the Receiving order is illegal.

A notice of preliminary objection was filed by Bengi Miriti and Associates on behalf of the Decree Holder contending that a Receiving Order having been made against the Debtor, the Debtor has no power authority or legal mandate to engage an advocate and therefore the firm of E. M. Obonyo and Company should not be allowed to act for him. It was maintained that only the Official Receiver can bring any action concerning the property of the Debtor, or move the court in such an application. In response Mr. Onyancha maintains that the Official Receiver is only concerned with the estate of the Debtor, but that the Debtor has a right to be represented in court. Mr. Gakuru who appeared for the Official Receiver concurred with Mr. Onyancha. He indicated that the Official Receiver had no objection to the advocates appearing for the Debtor.

I have considered the preliminary objection, first and foremost it is evident that the Debtor is already in Civil Jail and is therefore inhibited in bringing such an application. The same can therefore only be done on his behalf. Ideally, the same should have been done by the Official Receiver in whom the Debtor's estate now vests. However the application concerns the Debtor's personal liberty and not his estate per – se.

I understand the general thinking behind the Creditor's objection, for how can the Debtor afford to engage an advocate if a Receiving Order has been made against him and He is now no longer in control of his finances? The Official Receiver has however indicated that He has no objection to the advocate representing the Debtor, as assurance has been given that there will be no charge. In the circumstances, there is no justification for the court to deny the Debtor representation by counsel. The preliminary objection is therefore overruled.

Dated, signed and delivered this 22nd day of May 2007.

H. M. OKWENGU

JUDGE