

REPUBLIC OF KENYA

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

Bankruptcy Cause 54 of 2002

(IN THE MATTER OF JOSEPH MUIGAI WANENE – DEBTOR

AND

IN THE MATTER OF THE BANKRUPTCY ACT, CAP. 53)

1. KENYA COMMERCIAL BANK LTD

2. INTERFINA LIMITED.....CREDITORS/APPLICANTS

V E R S U S

JOSEPH MUIGAI WANENE DEBTOR/RESPONDENT

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

When the applications herein by notices of motion dated 7th September 2005 and 24th April 2006 respectively (filed by Creditors **KENYA COMMERCIAL BANK LTD** and **INTERFINA LIMITED**) came up for hearing on 13th June 2006, learned counsel for the Debtor raised a preliminary objection on a point of law, to wit, that the Creditors' learned counsels were not properly on record in that they had not filed and served notices of appointment of advocates as required by Order III, rule 1 of the Civil Procedure Rules.

It turned out that the advocates for **INTERFINA LIMITED** had indeed filed a notice of appointment of advocates on 18th May 2006 and duly served it upon the Debtor's advocates. With regard to the advocates for **KENYA COMMERCIAL BANK LTD.**, it was pointed out that the procedure in bankruptcy is different from the procedure under the Civil Procedure Rules; appearance in bankruptcy is made by way of proof of debt to the Official Receiver. Rule 317(2) of the Bankruptcy Rules made under the Bankruptcy Act, Cap. 53 was referred to. It excludes the rules of procedure of the High Court from proceedings in bankruptcy, save as provided by the Rules.

Both Creditors filed their proofs of debt with the Official Receiver through their advocates. They thereby properly entered appearance in these proceedings, and it was not necessary for their advocates to file notices of appointment of advocates under Order III, rule 1 of the Civil Procedure Rules, which Rules, in any event, have no application to proceedings in bankruptcy save as provided by the Bankruptcy Rules. It has not been pointed out that Order III, rule 1 of the Civil Procedure Rules has been operationalized by the Bankruptcy Rules.

The preliminary objection is not well-taken; it is hereby overruled with costs to the Creditors and the Official Receiver. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF SEPTEMBER, 2007

H. P. G. WAWERU

JUDGE

DELIVERED THIS 7TH DAY OF SEPTEMBER, 2007