

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Bankruptcy Cause 31 of 2006

LYDIA WANJIKU MWANGI PETITIONER/DEBTOR

VERSUS

JAMES MWANGI MWANIKI RESPONDENT/CREDITOR

R U L I N G

Upon the Debtor's petition dated 8th March 2006, a receiving order was made on 14th March, 2006 in respect to her estate. The Debtor has now come to court by notice of motion dated 26th March 2006 seeking the following orders:

- “1. That this application be certified urgent and be heard *ex-parte* in the first instant (*sic*).
2. That the Court do stay any action, execution and/or further execution or other legal process against the property of the person of the Petitioner pending the hearing and determination of this application *inter partes*.
3. The costs of this application be in the course (*sic*).”

As can be seen, there is no substantive prayer in this application which I heard on 11th May, 2006. Now that I have heard it, then what? A stay is sought pending hearing and determination of the application *inter partes*; but where is the further application to be heard *inter partes*?

Without a substantive prayer the application is misconceived and incompetent as the relief sought can only be granted if there is pending a substantive prayer, and there is not one such in this application. For the above reason I will, and hereby do, strike out the application. As this point was not taken by the Creditor's learned counsel, there shall be no order as to costs. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF MAY, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED ON THE 19TH DAY OF MAY, 2006.