

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Bankruptcy Case 1 of 2004

JOB BROWN AMBOKADECREE HOLDER/APPLICANT

V E R S U S

GORDON OSORE MANYASAJUDGMENT DEBTOR/RESPONDENT

R U L I N G

In the application dated 15/16/05 the decree-holder, Job Brown Amboka, sought leave to execute the decree issued in Kakamega CMCC No.490 of 2000 against Gordon Osore Manyasa, the judgment-debtor in that suit. The application was served on the debtor who did not oppose it. As a result, it proceeded ex-parte on 13.6.06. Mr. Mango, learned counsel for the applicant judgment creditor, urged the court to grant leave to his client to execute the said decree and submitted that the debtor has ability to pay the debt and the receiving order made in the Bankruptcy cause was made in bad faith. He relied on the grounds in the application and the affidavit of the judgment creditor sworn on 18.10.04.

The effect of the receiving order made in the Bankruptcy cause herein is that no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have remedy against the property or person of the debtor in respect of the debt or shall commence any action or other legal proceedings except with the leave of the court on such terms as the court may impose. Serious aspersions were cast on the debtor in paragraphs 2, 3, and 4 of the affidavit in support of the application which the debtor failed to respond to. Actions on the debtor's part to defeat the cause of justice are grave. As the debtor has failed to controvert the allegation and as the ends of justice require to be served by an order that will ensure the law is complied with and injustice redressed, I have no hesitation in allowing the application dated 16-11-04. The judgment creditor is granted leave to execute the decree in Kakamega CMCC No.490 of 2000 and to cause to be issued to the debtor a Notice to show cause why the debtor shall not be committed to civil jail for failure to settle the decree in the said suit. The debtor shall bear the costs of the application. It is so ordered.

Delivered, dated and signed at Kakamega this 20th day of June, 2006.

G. B. M. KARIUKI

J U D G E