



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Civil Case 186 of 2000**

**HON. EZEKIEL KIPLELEI BARNGETUNY .....  
PLAINTIFF**

**VERSUS**

**KENYA COMMERCIAL BANK LTD ..... DEFENDANT**

**R U L I N G:**

At the hearing of an application for leave to amend Defence and Counter claim filed by Defendant, the Plaintiff's Counsel presented in court a Gazette Notice No. 83 of 7<sup>th</sup> February, 2003 publishing a Receiving Order against the Defendant, Ezekiel Barngetuny. The receiving order was caused to be gazetted by the Official Receiver and was made on 18<sup>th</sup> December, 2002. This fact is not disputed by the Defendant.

On the basis of this and the provisions of section 9(1) of the Bankruptcy Act, the plaintiff has asked this court to stay all proceedings in this suit. The defendant has opposed the said oral application saying that there is no provision for stay of proceedings and that the Defendant can prosecute its counter claim.

I have considered the provisions of Section 9(1) of the Bankruptcy Act which stipulates as followed:-

**“9(1) on the making of a receiving order the official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any 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 and on such terms in the court may impose.”**

This suit was pending in court when the receiving order was given. A careful reading shows that one must obtain leave of the court before commencing any action or other legal proceedings against a debtor. However, there is no reference to any stay of proceedings in respect of existing and/or pending suits as of the time a Receiving Order is made. It would appear that the court has a discretion to order stay of proceedings when granting a Receiving Order. Rule 144 of the Bankruptcy Rules reads:-

**“144: There may be included in a receiving order an order staying any action or proceeding against the debtor or staying proceedings generally”**

This demonstrates that there is no automatic stay of proceedings. However, once a receiving order is given, no proceedings can be prosecuted by or against the debtor without the consent of the Receiver. In fact under the provisions of section 9(1), it is my view, the Receiver is required to take over all suits

pending in court filed by the debtor or filed against such a debtor.

In the premises, I do hereby order that this suit be stayed until the Official Receiver is notified of it and decides whether to terminate it or take it over. The Defendant is to serve all process in this suit on the Official Receiver as the Debtor has no capacity to retain counsel in any commercial litigation without the consent and involvement of the Receiver.

**DATED AND DELIVERED AT ELDORET ON THIS 28<sup>TH</sup> DAY OF JULY 2006**

**M. K. IBRAHIM**

**JUDGE**

**28/7/06**

Coram - Ibrahim J

CC Chelanga

Mrs. Manani for the plaintiff

Mr. Shivaji for the defendant/respondent

Ruling read in their presence.

**M. K. IBRAHIM**

**JUDGE**