



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

**Bankruptcy Cause 1 of 2006**

**IN THE MATTER OF BANKRUPTCY ACT CAP 53 LAWS OF KENYA**

**AND**

**IN THE MATTER OF JOYCE IMBULANI KIDAHA - DEBTOR**

**RULING**

In her Petition dated 27.11.2006, the debtor, **JOYCE IMBULANI KIDAHA**, petitioned this court to make a receiving order adjudging her bankrupt on the ground that she has been unable to pay her debts. In her brief affidavit, the debtor verified and confirmed that the statement of affairs was true. The Statement of Affairs shows that the debtor has no property but is indebted to several creditors one of whom (Nelson Mulanda) is owed Shs.326,000/= in respect of which there is a court decree. The reference of the court case in which the decree was issued was not stated in the Petition, or in the Statement of Affairs or in the Affidavit by the debtor and these documents do not offer any evidence to show that the debts alleged do exist.

The Certificate of Compliance signed by (Mrs.) Josephine Ogola for official Receiver is incomplete and does not show what amount, if any, of deposit and official receiver's expenses has been paid.

Under section 3(f) of the Bankruptcy Act, Cap 53, a person is deemed to have committed an act of bankruptcy if he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself.

- 2 -

On presentation, a bankruptcy petition is deemed to be an act of bankruptcy without previous filing by the debtor of any declaration of inability to pay his debts. However, the court is entitled to refuse to issue a receiving order where the debtor has failed to file with the official receiver his statement of affairs and to pay deposit and expenses of the latter.

The Certificate of compliance dated 27<sup>th</sup> November, 2006 by the official Receiver does not appear to be in conformity with section 16(1) of the Bankruptcy Act.

For these reasons, I decline to issue a Receiving order.

***Dated at Kakamega this 6<sup>th</sup> day of December, 2006.***

**G. B. M. KARIUKI**

**J U D G E**