



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI  
COMMERCIAL DIVISION, MILIMANI**

**BANKRUPTCY CAUSE NO. 41 OF 2004**

**IN THE MATTER OF NELSON NGURE WANJOHI**

**AND**

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

**R U L I N G**

In this application (**by notice of motion dated 25th May, 2004**) the Petitioner/Debtor seeks an order of stay of execution of decree in Nairobi CMCC No.9889 of 2002 pending determination of this bankruptcy cause. The application is brought under section 11 of the Bankruptcy Act, Cap 53 (the Act) and also under Rule 15 of the Bankruptcy Rules. Section 3A of the Civil Procedure Act, Cap.21, is also quoted.

Section 11 aforesaid donates to court power to stay any action, execution or other legal process against the property or person of the debtor at any time after the presentation of a bankruptcy petition. The application is made upon the grounds that on 31st March, 2004 the Petitioner filed a debtor's petition herein; that a receiving order has since been issued against his estate and the Official Receiver duly constituted as the receiver of the estate; and that there are warrants of attachment in force against the Petitioner. The application is supported by an affidavit sworn by the Petitioner in which he elaborates those grounds.

The application is opposed by the Decree-Holder in Nairobi CMCC No.9889 of 2002 upon the grounds contained in the replying affidavit sworn by one **HARUN NJUGUNA**, the Credit Manager of the aforesaid Creditor. It is deponed in that affidavit that the Petitioner's goods have already been attached in execution of decree in the aforesaid suit, though the goods have not been sold yet; that the Petitioner has a thriving business called Ngombe Chemical Industries; that the Creditor is the only creditor mentioned by the Petitioner in his statement of affairs filed together with the petition; that the Creditor should therefore be allowed to recover its debt from the assets of the Petitioner; and that in the circumstances of this case the order sought ought to be refused.

The submissions of the learned counsels appearing were in elaboration of the parties respective positions as taken in their affidavits. I have considered those submissions. The court has an unfettered discretion under subsection (1) of section 11 of the Act. I note that the Creditor, Family Finance Building Society, is named by the Petitioner as his only creditor in his statement of affairs filed with the petition. True, the Creditor is a secured creditor; but it has been deponed in the replying affidavit that the Creditor's efforts to realize the security did not bear any fruit, and that is why it filed suit against the Petitioner vide Nairobi CMCC No. 9889 of 2002 where it obtained judgement. It was stated from the bar by learned counsel for the Petitioner that the goods attached in execution of the decree in the said suit did not belong to the Petitioner but to someone else whom he did not name. Nor did he state that there are any objection to attachment proceedings pending in that suit. In this present matter, there is no affidavit sworn by any such third party allegedly owning the goods attached in execution of decree. I do not think that the Petitioner has been fully candid with the court. He has not even replied to the allegation contained in the replying affidavit that he is infact running a thriving business of salt packaging and distribution known as Ngombe Chemical Industries.

Having considered all matters placed before the court I do not find any merit in the application. It is hereby dismissed with costs. Order accordingly.

**DELIVERED AT NAIROBI THIS 5TH DAY OF NOVEMBER, 2004.**

**H.P.G. WAWERU**

**JUDGE**