



**Equity Bank Limited v Obunde (Insolvency Cause E007 of 2021)
[2025] KEHC 440 (KLR) (Commercial and Tax) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 440 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E007 OF 2021**

PM MULWA, J

JANUARY 23, 2025

IN THE MATTER OF NORBERT OKUMU OBUNDE

AND

IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015

BETWEEN

EQUITY BANK LIMITED PETITIONER

AND

NORBERT OKUMU OBUNDE RESPONDENT

JUDGMENT

1. The Petitioner, Equity Bank Limited filed an Insolvency Petition dated 12th August 2020 against the Respondent, Norbert Okumu Obunde seeking that he be declared bankrupt by an order of the Court under the provisions of the [Insolvency Act](#) No. 18 of 2015.
2. The Petitioner avers that the Respondent is indebted to the tune of Kshs. 3,109,014.58, being the decretal amount awarded in Nyamira CMCC No. 29 of 2016. The Petitioner further contends that, despite the service of a statutory demand, the Respondent has failed to settle the decretal sum.
3. The petition is supported by the affidavit sworn on 12th August, 2020 by Stanley Barasa, the Manager of Equity Bank Nyamira Branch.
4. In response to the petition, the Respondent filed a replying affidavit dated 7th December 2021. He denies being unable to pay the decretal sum and avers that the Petitioner is using parallel methods to collect the debt. The Respondent challenges the instant petition because he has made payments totaling Kshs. 60,000.00 which were paid in three monthly instalments of Kshs. 20,000.00 each, as agreed with the Receivable Management appointed by the Petitioner.



5. The petition was heard through written submissions, with only the petitioner filing the submissions dated 25th May 2022. The Petitioner contends that the debt in question has remained unpaid for a period exceeding four years. The offer presented in the replying affidavit is, in the Petitioner's view, a transparent attempt to mislead the Court by suggesting that the Respondent is willing to settle the debt, when, in reality, he has no genuine intention of doing so.
6. The Petitioner exhibited a decree issued on 20th April 2016 accompanied by a certificate of costs dated 4th August 2016 in Nyamira CMCC No. 29 of 2016, in its favour. No evidence has been adduced by the Respondent to demonstrate that the decree has been satisfied.
7. There is only one issue for the court to determine; whether the debtor, Norbert Okumu Obunde, should be adjudged bankrupt.
8. The main consideration in the bankruptcy application against a debtor as stipulated under Section 17 of the Insolvency Act is to specify the debt owed and the debtor is unable to pay the debt. Under the law a debtor is presumed to be unable to pay a debt if he does not comply with or apply to set aside a statutory demand.
9. After a statutory demand/notice, is served on a debtor and the debtor does not make payment within 21 days or does not apply to court to set it aside, the creditor may proceed to file a creditors bankruptcy petition against the debtor.
10. In the present case, it is undisputed that the Respondent owes the Petitioner. Further, the Respondent failed and did not comply with the statutory demand dated 5th August 2019.
11. Again, the Respondent having been duly served with the petition only filed a replying affidavit. He failed to file submissions despite being afforded humble time to do so. In the absence of any contrary evidence from the Respondent, I find that the Petitioner's evidence remained uncontested.
12. In the circumstances, the Petitioner has proved its case on a balance of probabilities. Accordingly, I allow the petition as prayed and order that a bankruptcy order be made against the debtor. Costs will be to the Petitioner.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF JANUARY 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Mugambi for Petitioner

N/A for Respondent

Court Assistant: Carlos

