



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Margaret Waitherero (Debtor) (Insolvency Petition  
E002 of 2024) [2025] KEHC 1836 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1836 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
INSOLVENCY PETITION E002 OF 2024  
RN NYAKUNDI, J  
FEBRUARY 21, 2025**

**IN THE MATTER OF MARGARET WAITHERERO (DEBTOR)**

**RULING**

QUOTE

1. The Petitioner approached this court vide a Petition dated 27/06/2024 expressed to be brought under the *Insolvency Act*. She seeks orders that the court adjudge her bankrupt for being unable to pay her debts. The grounds for the application are set out on the face of it and in the contents of the supporting affidavit.
2. The petitioner is a resident of Kapseret Ward in Uasin Gishu County who is a small-scale farmer. She had a matatu business which collapsed following an accident in November 2018. She deponed, in her affidavit, that for the year 2023 her net income was barely Kshs. 11,000 and for the year 2023, her total income was Kshs. 43,300/-. She broke down her expenditure analysis for the year 2023 as follows;
  - a. Domestic expenses per month for food at Kshs. 4,000/-, subsistence expenses at Kshs. 2,000/-, utility bills for electricity at Kshs. 250/-
  - b. Personal medical care expenses per month at Kshs. 500/-
  - c. Other annual expenses such as transport, welfare among others at Kshs. 23,000/-
3. She deponed that the total deficit amounts to Kshs. 68,200. Additionally, she stated that she is heavily indebted to various people as follows;
  - a. Moses Wamutoro & Dismas Wamutoro – Kshs. 9,453,843/-
  - b. Andrew Muturi Kshs. 44,000
  - c. Francis Karuga Kshs. 51,000
  - d. Sundry creditors – Kshs. 110,000/-



4. The Petitioner stated that the huge debt was as a result of the road traffic accident as the amount was over and above what her insurer was required to pay indemnifying her. Pursuant to the Notice to Show Cause dated 7<sup>th</sup> March 2024 the decretal sum to be dispensed to Moses Wamutoro & Dismus Wamutoro (as the legal representatives of the estate of the late Khakoni Damary Lumbasi) is Kshs. 9,453,843/-. Further, that her Chama account has a balance of Kshs. 668.61 and she has no other assets. She is unable to pay the debt within the meaning of the Bankruptcy Act and she therefore pleads with the court to save her the embarrassment of civil jail.

### **Petitioners' Submissions**

5. The Petitioner filed submissions through the firm of Messrs Musa Boaz & Company Advocates. Counsel for the Petitioner submitted that section 32 of the *Insolvency Act* 2015 states that a debtor away make an application in court for a bankruptcy order adjudging him/her bankrupt. He stated that the petitioner has complied with the said section by filing the requisite documents being;
- a. Bankruptcy petition - form 10
  - b. Supporting affidavit - form, 8
  - c. Application for Bankruptcy trustee form 9
  - d. Statement of affairs - form 11
6. Further, that she has obtained a certificate of compliance by the official receiver upon payment of the Statutory fee of Kshs.30, 000/= and has paid all the requisite filing fees. The petitioner as required by the Act has published a Notice of the Bankruptcy Petition in the standard Newspaper which is a newspaper of wide circulation. Counsel urged that the petitioner has satisfactorily complied with the law and as such her petition should be allowed as prayed.
7. Counsel urged that the petitioner has stated the debt, disclosed the creditors, her financial status and the hardship she is facing in paying her debts and ultimately, that she is unable to pay the debts. She has further exhibited a Notice to Show Cause which has the ultimate yield of having her committed to civil jail which will have adverse effect on her life taking into consideration her advanced age. Counsel prayed that the court finds for the petitioner and allows her petition as prayed and proceed to adjudge her Bankrupt and issue a Bankruptcy order.

### **Issues for determination**

8. The sole issue for determination is; Whether the petition for bankruptcy ought to be granted. *In re James Maina Kabatha (Debtor/Applicant) NKR* Insolvency Cause No. 4 of 2019 [2020] eKLR, Prof Ngugi J (as he then was) observed as follows;

‘The twin goals of consumer or individual bankruptcy law are to protect creditors and ensure optimal payment to them where possible; and the provision of shelter and a “fresh start” to individual debtors overburdened by debt.’

9. The learned judge adds that:

The “fresh start” goal is accomplished through the bankruptcy discharge, which usually releases the debtor from personal liability from certain debts and prevents creditors from taking any action against the debtor to collect those debts.



Consequently, bankruptcy protection being an extraordinary relief, one of the corollaries to these seemingly conflictual twin goals of bankruptcy law – the protection of creditors and the provision of fresh start for the honest but unfortunate debtor -- is that an individual seeking bankruptcy protection is required to scrupulously demonstrate that he is acting in good faith and disclose all his financial information.

It is only upon meeting this double threshold – demonstration of good faith and full disclosure of all financial information – that a Petitioner can become entitled to a bankruptcy order. The architecture and structure of the *Insolvency Act* and Insolvency Regulations, 2018 reinforce these double threshold for individual Petitioners.

10. Section 32 of the *Insolvency Act* provides as follows;

- (1) A debtor may make an application to the Court for an order adjudging the debtor bankrupt only on the grounds that the debtor is unable to pay the debtor's debts.
- (2) The Court may decline to deal with such an application if it is not accompanied by a statement of the debtor's financial position containing -
  - (a) such particulars of the debtor's creditors and of the debtor's debts and other liabilities and assets as may be prescribed by the insolvency regulations; and
  - (b) such other information as may be so prescribed.
- (3) The Court may reject a statement of the debtor's financial position if of the opinion that it is incorrect or incomplete.
- (4) A debtor who makes an application under this section shall publish a notice of the application in :-
  - (a) a newspaper circulating within the region in which the debtor ordinarily resides; and
  - (b) in such other publications (if any) as may prescribed by the insolvency regulations for purposes of this section.
- (5) The Court may decline to hear the application if subsection (4) has not been complied with to its satisfaction.

11. I have considered the statement of affairs filed by the debtor and shows that the only assets she has are her furniture, personal effects and Kshs. 688.61/- in her Chama account which are worth a total of Kshs. 13,188.60/- while the aggregate debt is a total of Kshs.9,453,843/- which includes judgements against her.

12. From the totality of the evidence, I am satisfied that the Debtor is unable to pay her debts. I however note that there is no evidence on record that she has complied with section 32(4) of the *Insolvency Act*. However, the provisions of section 34(5) are not couched in mandatory terms and therefore it is upon the court to decide whether or not it shall entertain the application if the notice has not been published. A perusal of the affidavits of service on record, sworn by Bishon Warui Mathenge reveal that there was a copy of the advertisement that ran in the Standard Newspaper of 2<sup>nd</sup> August 2024 with regards to the Petition. I find the same satisfactory and therefore the debtor has complied with all the requirements as per the act.

13. I therefore do not find any compelling reason to deny the order of bankruptcy against the Petitioner. I allow the Petition dated 5<sup>th</sup> July 2024 by making the following orders:



- i. Margaret Waitherero be and is hereby adjudged bankrupt and a bankruptcy order is made against her estate.
- ii. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed to be the Bankruptcy Trustee in respect of the Debtor's Property.
- iii. Cost of the petition shall be borne out of the Debtor's estate.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 21<sup>ST</sup> DAY OF FEBRUARY 2025**

In the Presence of

Mr. Njoroge Mungai

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**R. NYAKUNDI**

**JUDGE**

Representation:

Musa Boaz & Thomas Advocate

