



**In re Jeremiah Koskei Bowen (Insolvency Cause E038 of 2022)
[2025] KEHC 2286 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2286 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E038 OF 2022
JWW MONG'ARE, J
FEBRUARY 13, 2025
IN THE MATTER OF JEREMIAH KOSKEI BOWEN
AND
IN THE MATTER OF THE INSOLVENCY ACT(CAP 53; LAWS OF KENYA)**

RULING

1. Jeremiah Koskei Bowen (“the Debtor”) filed a petition dated 16th November 2022 seeking to be adjudged bankrupt by an order of this court for the reason that he is unable to pay his debts. He followed this Petition with an application dated 20th February 2024 that seeks a similar order of bankruptcy. This application is supported by grounds on its face and the Debtor’s supporting affidavit sworn on 20th February 2024. The application has been responded to by various Creditors including Saman Trading Company Limited through the replying affidavit of its directors, Asha Hashe Dore, sworn on 27th March 2024; Janet Tabitha Waceke who swore a replying affidavit on 23rd April 2024; Michael K. Chemwok of Messrs. Chemwork & Co. Advocates who swore a replying affidavit on 17th May 2024 and; KCB Bank limited who relied on a replying affidavit sworn by its Senior Legal Counsel, Velma Okoth on 23rd July 2024.
2. The application was canvassed by way of written submissions which together with the pleadings, I will make relevant references to in my analysis and determination below.

Analysis and Determination

3. From a careful analysis of the pleadings and submissions, I note that the main issue for determination is whether the court should issue a bankruptcy order in favour of the Debtor. It is not in dispute that section 32 of the *Insolvency Act* provides for when a debtor may make an application for bankruptcy 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.
4. The Debtor states that he is unable to pay his debts which are now running over Kshs 47,738,506.40/=. Whereas in his application, he has deposed on the various debts he owes the Creditors, he has not attached a statement of his financial position which is a requirement under section 32 above and this makes his application incomplete. I find that such statement of his financial position is important considering that all the Creditors have opposed his application on grounds that the same is not in good faith as he is able to pay his debts but he is unwilling to do so. They also accuse him of hiding his assets behind third parties in a bid to conceal his true financial position and escape payment of his debts. It has also been shown that the Debtor had filed a similar bankruptcy application before this court in Eldoret back in 2019, a fact that the Debtor has not disclosed. This lends credence to the assertion that the Debtor is not being entirely truthful about his financial affairs.
5. I associate myself with the dicta of Prof Ngugi. J.,(as he was then) *In the James Maina Kabatha (Debtor/Applicant)* [2020] KEHC 2685 (KLR) where he stated that “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.” The learned judge added that:-
3. 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.
 4. 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.
 5. 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 thresholds for individual Petitioners.



6. Further, the Court of Appeal in *Ngei v Official Receiver* [1982] KECA 67 (KLR), held that a petition for bankruptcy must be made in good faith and there should be no material non-disclosure. As such, it was incumbent upon the Debtor to disclose and demonstrate his financial position by way of primary financial statements and documents and further disclose all matters in respect of his affairs, including that he had filed a similar bankruptcy application in Eldoret in 2019. It is therefore my finding that the Debtor is guilty of material non-disclosure and coupled by the fact that there are no verifiable statements of his income and expenses, the court cannot come to a conclusion he is unable to pay his debts. If anything, I find that this petition and the application is an abuse of the court process as they have not been filed in good faith.

Conclusion and Disposition

7. In the foregoing, the application dated 20th February 2024 is dismissed and the petition dated 16th November 2022 is struck out for being an abuse of the court process. The Creditors are entitled to costs of the same. The Interim Orders in place are now discharged.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13TH DAY OF FEBRUARY 2025

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J.W.W. MONGARE

JUDGE

In the Presence of:-

1. Ms. Muchiri holding brief for Mr. Angich for the Petitioner /Applicant.
2. Mr. Wanjala holding brief for Mr. Lakicha for the 1st Respondent/Creditor.
3. Ms. Satia for the 2nd Respondent/Creditor.
4. Amos - Court Assistant

