



**In re Willy Musyimi Lazalo (Debtor) (Insolvency Cause E020 & E021 of 2023 (Consolidated))
[2025] KEHC 1435 (KLR) (Commercial and Tax) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1435 (KLR)

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

INSOLVENCY CAUSE E020 & E021 OF 2023 (CONSOLIDATED)

PM MULWA, J

FEBRUARY 13, 2025

**IN THE MATTER OF THE INSOLVENCY ACT
INSOLVENCY CAUSE NO. E020 & E021 OF 2023**

RE: WILLY MUSYIMI LAZALO..... DEBTOR

JUDGMENT

1. By a debtor's petition dated 29th May 2023, Willy Musyimi Lazalo, a resident of Machakos, petitioned to this court for a bankruptcy order on grounds that he was unable to pay his debts. He prayed that he be adjudged bankrupt. Annexed to the petition is his statement of affairs (individual person) reflecting assets worth Kshs. 35,000.00 and liabilities to the tune of Kshs. 500,000.00. His main creditor is one Sammy Nthiwa Mutisya whose debt is indicated as secured for a sum of Kshs. 500,000.00.
2. In addition, the debtor provided information relating to his affairs by filing a supporting affidavit sworn on 29th May 2023 where he deposed that at one time in 2017 he had been charged with a traffic offence of causing death by dangerous driving but was acquitted. That later the legal representatives of the estate of Mary Mueni Maingi (deceased) instituted Machakos CMCC No. 47 of 2021. That the civil suit is still pending but the debtor is apprehensive that if the suit is not determined in his favour he will be committed to civil jail.
3. The debtor avers that the money he borrowed from Sammy Mutisya, that is Kshs. 500,000.00, was used to pay the advocate who represented him in the traffic case. That Mr. Mutisya is always demanding back his money. According to the debtor, he is a peasant farmer growing only food crops and is currently unable to pay his debts.
4. The Official Receiver stated that the debtor had complied with all the requirements and was not opposed to him being issued with a bankruptcy order.
5. In considering the application, I have read statement of affairs and the affidavit in support. The main issue for consideration is whether the petition is merited.



6. The policy underpinning insolvency legislation and practice is that a debtor is entitled to seek relief from unmanageable debt through bankruptcy if the debtor is unable to resolve his or her financial difficulties through other means. However, bankruptcy is regarded as an option of last resort because it has serious consequences.
7. The procedure for instituting bankruptcy proceedings by debtors is provided under Section 32 of the [Insolvency Act](#) 2015. I reproduce the section here below”
 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.
8. The above section allows a party to apply for bankruptcy and sets out the conditions to be met. A publication should be done in a newspaper in circulation within the region. The rationale is to elicit any objection by the creditors. A perusal of the documents annexed reveals that the advertisement was not done, and therefore that provision has not been complied with.
9. Further sub-section 3 allows the Court to reject a statement of the debtor's financial position if it is of the opinion that it is incorrect or incomplete. In the instant case, the financial statement provided only states an indebtedness to Mr. Mutisya of Kshs. 500,000.00 and assets worth Kshs. 35,000.00 without evidence. This is not sufficient to prove that Lazalo is unable to pay the debt owed.
10. The petition must be made in good faith and there should be no material non-disclosure. There must be clear proof of actual insolvency and the petitioner's case must firmly be asserted in the founding affidavit.
11. To establish insolvency; it must be shown that the debtor's liabilities as a fact exceed his assets and not merely that they might do so, and clear proof of this must be adduced. An applicant must make a prima facie case. The debtor's case herein is premised on his assertion that he was sued in Machakos CMCC No. 47 of 2021. As at the time he deponed his affidavit in May 2023 the case was yet to be determined. He has no tendered evidence on the status so far.
12. Upon analyzing the material before me and flowing my discussion herein above it is my finding that the debtor has failed to discharge the burden of proof and the instant petition lacks merit and is dismissed.



JUDGMENT DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025.

P.M. MULWA

JUDGE

In the presence of:

N/A for Debtor (appears in person)

Ms. Mugo for the Official Receiver

Court Assistant: Carlos

