



REPUBLIC OF KENYA



KENYA LAW
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**Kairu v EON Energy Ltd (Insolvency Cause E005 of 2022)
[2025] KEHC 2151 (KLR) (Commercial and Tax) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2151 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E005 OF 2022
A MABEYA, J
FEBRUARY 13, 2025**

BETWEEN

ALFRED KANYINGI KAIRU DEBTOR

AND

EON ENERGY LTD CREDITOR

JUDGMENT

1. The Petitioner herein, Alfred Kanyingi Kairu, filed the Petition dated 3/3/2022 stating that he was unable to pay his debts and therefore sought a bankruptcy order from the Court in respect of his estate and that he be adjudged bankrupt. In support of the Petition, he attached the Statement of Affairs outlining assets, liabilities and their values.
2. The Petition was also supported by his Supporting Affidavit sworn on the same date. He deponed that he had fallen into tough times in the last six years and subsequently lost his petrol station business sometime in 2017 and that his tools of trade which were his source of livelihood were auctioned off.
3. In addition, he had previously mortgaged his house which he was unable to pay the debt which was in excess of Kshs.28,000,000/= and as such Absa Bank Plc were in the process of exercising their statutory power of sale over his home.
4. On 3/8/2020, a default judgment of Kshs.29, 900,000/= was entered against him in High Court Commercial Civil Suit No. 445 of 2017 and he had been unable to pay the said sum.
5. Due to the foregoing, he stated that he had no assets or money that he can apply towards settlement of the debt and that he survived on the good will of a few friends for his daily sustenance.
6. Following the filing of the Petition, the Interested Party sought to be enjoined as a creditor on the ground that it had a valid decree against the company of the Petitioner of about Kshs.10,824,439/-



dated 20/4/2022. The Court allowed this application and the Interested Party was therefore enjoined in these proceedings accordingly.

7. Having been enjoined as such, the Interested Party filed a Replying Affidavit of Dwalo Ariaro sworn on 7/12/2023 in response to the Petition. He deponed that the application for insolvency by the Petitioner was a scheme to prevent the Interested party from enjoying the fruits of the decree that had been awarded in its favour.
8. That the Petitioner had no intention to satisfy the decretal sum as he had employed several tactics to frustrate the interested party including transferring his two fuel service stations to Abundant Petroleum a separate company while promising to sell the same assets to offset the outstanding debt to the interested party.
9. Further, that the Petitioner had failed to include the interested party in his list of creditors. This omission raised serious concerns about the Petitioner's bad faith and untrustworthiness. That the Petitioner was demonstrably a man of means and had the resources to settle his liabilities as and when they fall due. This fact, coupled with the omission of the interested party from the list of creditors suggested that the petition was an abuse of the court process. That this strengthened the case for dismissing the petition.
10. The parties filed their respective submissions which the Court has carefully considered alongside the Petition and the response thereto. The only issue for determination is whether the Petition for bankruptcy is merited.
11. The interested party faulted the Petitioner for failing to include it in his list of creditors. In response, the Petitioner, in his submissions, denied the interested party's claim of being a creditor.
12. The Court has perused the judgment in Nairobi CMCC NO. 7325 of 2018. It is notable that the case against the Petitioner was dismissed and only Kwikfill Petroleum Limited was found liable. So far as there was no evidence adduced to show that there existed an order lifting the corporate veil to enable the interested party hold the Petitioner liable, its claim herein cannot lie.
13. Evidently, in its submissions, the interested party sought to introduce and prosecute an application for the lifting of the corporate veil. That cannot be sustained. It should be done elsewhere and introduced before the Insolvency Court.
14. It was the Petitioner's submission that he had provided a true statement of his financial information and had therefore met the threshold for grant of the prayers sought in the Petition.
15. Under section 32 of the *Insolvency Act*, a debtor is entitled to seek the protection of bankruptcy where he is unable to pay his debts. The section provides: -
 - 1) A debtor may make an application for an order adjudging the debtor bankrupt only on the grounds that the debtor is unable to 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 it is 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.”
16. The import of the above provision is that, a debtor is entitled to apply to be adjudged bankrupt on the grounds that he or she is unable to pay his or her debts.
17. In the present case, there is sufficient evidence that the Petitioner is unable to pay his debts. Having considered the statement of affairs filed by the Petitioner, it shows that the only assets he has are his personal effects worth Kshs.55,000/- and a house charged to ABSA Bank Kenya PLC for Kshs.28,000,000/- while the aggregate debt due to the creditors is Kshs.57,900,000/-.
18. In light of the above, the Court is satisfied that the Petitioner is unable to pay his debts. In this regard, there is no compelling reason to deny the order of bankruptcy against the Petitioner.
19. Accordingly, the Petition is allowed and the Petitioner is hereby adjudged bankrupt and a bankruptcy order is made against his estate.
20. The Secured Creditor ABSA Bank Kenya PLC is be at liberty to exercise its statutory power of sale in accordance with the law, over the charged property to settle the outstanding debt. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed to be the Bankruptcy Trustee in respect of the Petitioner’s Estate.

It is so decreed.

SIGNED AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2025.

A. MABEYA, FCI Arb

JUDGE

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

F. GIKONYO

JUDGE

