



**Kyongo v Official Receiver (Insolvency Cause E028 of 2024)
[2025] KEHC 3317 (KLR) (Commercial and Tax) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3317 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E028 OF 2024**

BK NJOROGE, J

MARCH 20, 2025

BETWEEN

ALEX MUMO KYONGO DEBTOR

AND

OFFICIAL RECEIVER RESPONDENT

JUDGMENT

1. This judgement is in respect of a Debtor's Petition dated 9th September, 2024. It is presented by Alex Mumo Kyongo. It is supported by his own affidavit sworn on 9th September, 2024 with annexures.
2. He depones that he is a businessman engaged in supplies, business and agriculture.
3. That during the course of operating the businesses, he had incurred unsecured and personal debts amounting to Kshs 27,000,000.
4. That he owes the following;
 - a. Benjamin Mwema Musili Kshs 10,800,000.00
 - b. Justus Mwithi Kshs 3,000,000.00
 - c. Gregory Kivuva Kshs 6,500,000.00
 - d. Stelamaris Mueni Kshs 2,500,000.00
 - e. Gratier Makau Kshs 4,200,000.00
5. That he has been sued by the said Benjamin Muema Musili in Kitui CCM. E178 of 2024 Benjamin Muema Musili -vs- Alex Mumo Kyongo for a sum of Kshs 7,250,000. A copy of the plaint is attached to the affidavit.



6. He states that he has borrowed from family members and friends in order to pay back his debts. Currently he is unable to pay what he owes.
7. Faced with what he sees as financial ruin, he has presented the Petition dated 9th September, 2024. He seeks an order that he be adjudged bankrupt.
8. The Debtor is acting in person. The Petition is uncontested.
9. The matter was flagged down for the Rapid Results Initiative (RRI) for the month of November, 2024.
10. The Debtor appeared in Court virtually and testified on 7th November, 2024.
11. Mr. Njenga for the official receiver appeared in Court on the same date. He did not oppose the Petition.

Issues for determination

12. The court having heard the debtor frames two issues for determination.
 - a. Whether the bankruptcy order should issue.
 - b. Who should be appointed as the trustee in bankruptcy?

Analysis

13. The rationale behind a Debtor's Petition for bankruptcy orders in seeking some protection from the Court, as well as a fresh start is set out in [*James Maina Kabatha \(Debtor/Applicant\)* \[2020\] eKLR](#). This is a decision of Prof. Ngugi J (as he then was) where he stated 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. There is no doubt that these twin goals run through the [*Insolvency Act*, 2015](#) and the [*Insolvency Regulations*, 2016](#).

2. The US Supreme Court explained the fundamental goal of bankruptcy law in [*Local Loan Co. v Hunt*, 292 U.S. 234, 244 \(1934\)](#) thus:

[Bankruptcy law] gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.
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 the 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 threshold for individual Petitioners.”

14. Section 32 of the Insolvency Act provides as follows;

32. When debtor may make application for bankruptcy order

- (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.

15. Regulation 18 of the Insolvency Regulations provides as follows;

18. When debtor may make application for bankruptcy order

- (1) An application for a bankruptcy order by the debtor shall be made by way of a bankruptcy petition and shall be in Form 10 set out in the First Schedule.
- (2) The petition shall be accompanied by the following documents—
 - (a) an affidavit to the petition which shall be in Form 8 set out in the First Schedule;
 - (b) statement of debtors financial position, which shall be called a “statement of affairs”, and shall be in Form 11 set out in the First Schedule; and
 - (c) application for appointment of trustee which shall be in Form 9 of the First Schedule.
- (3) For the purposes of section 32 (2) of the Act, the statement of the debtor's financial position is required to include the following information—
 - (a) the debtor's full name;
 - (b) the debtor's current address, telephone number, and any other contact detail including mobile telephone number or an email address;



- (c) if the debtor has used any other name, including any alias in the last seven years, those other names and aliases;
 - (d) the debtor's date of birth;
 - (e) whether the debtor is male or female;
 - (f) the debtor's Kenya Revenue Authority Personal Identification Number;
 - (g) if the debtor has a current passport, his nationality and the passport number;
 - (h) if the debtor is employed—
 - (i) the employer's name and address;
 - (ii) the debtor's occupation or designation;
 - (iii) a statement of the debtor's income;
 - (j) an itemised statement of the debtor's expenses;
 - (k) deleted by L.N. 7/2018, r. 7;
 - (l) a statement of the partner's income;
 - (m) a statement of the debtor's current assets, including the description, value, and location of those assets;
 - (n) a statement of any assets that the debtor has disposed of in the previous three years;
 - (o) a statement of the debtor's liabilities, including any contingent liabilities, with the following details for each liability—
 - (i) the amount;
 - (ii) whether the liability includes goods and services tax;
 - (iii) how liability was incurred;
 - (iv) whether the liability is secured;
 - (v) if the liability is secured, a description of the security;
 - (vi) whether the liability is a preferential debt;
 - (p) a statement of all financial transactions by the debtor during the previous three years.
- (4) The debtor is required to sign and date the statement of the debtor's financial position and arrange for the publication of the statement in the Kenya Gazette.
- (5) The debtor shall be responsible for the costs of publishing the statement in the Gazette.

16. The Court's answer to the two issues framed is as follows;



a. Whether the Bankruptcy Order should Issue

17. The Petition was advertised in the Daily Nation newspaper of 26th October, 2024. The Court has seen a copy of the advertisement. This complies with Section 32 (4) of the Insolvency Act which states as follows;
- 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.
18. A detailed Statement of Affairs of the Debtor had been filed pursuant to Regulation 18 of the Insolvency Regulations.
19. The Debtor estimates his debts have accumulated to Kshs 27,000,000.00. By any means this is a substantial debt. The Debtor has not shown any means to pay this debt.
20. The Debtor has annexed several demand letters that he has been receiving from the other Creditors.
21. The Statement of Affairs shows that the Debtor has assets amounting to Kshs 155,000. This is cash at hand Kshs 40,000 and personal effects Kshs 90,000. This pales in contrast to his debts amounting to Kshs 27,000,000. There is therefore sufficient demonstration of inability to settle his debts.

b) Who should be Appointed as the Trustee in Bankruptcy?

22. The Court is persuaded that it should issue a bankruptcy order.
23. The Petitioner seeks that the Official Receiver of the Republic of Kenya be appointed as the Bankruptcy Trustee. This is pursuant to Regulation 18(2) (c) of the Insolvency Regulations.
24. The Official Receiver has issued a certificate of compliance dated 9th September, 2024.
25. The Petitioner has persuaded the Court that the Official Receiver should be appointed in the matter as the Bankruptcy Trustee.

Determination

26. The Petition dated 9th September, 2024 is allowed in the following terms;
- a. Alex Mumo Kyongo be and is hereby adjudged bankrupt and a bankruptcy order is made against his estate.
- b. The official receiver is hereby appointed to be the Bankruptcy Trustee in respect of the debtor's property.
- c. The costs of the Petition should be borne out of the Debtor's estate.
27. It is so ordered.

SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 20TH DAY OF MARCH 2025.
NJOROGE BENJAMIN K.

JUDGE



In the presence of:

.....for Applicant

.....for Respondent

Mr. Luyai- Court Assistant

