



**Mohhamud v Tom Ojienda & Associates (Insolvency Petition
E001 of 2015) [2025] KEHC 3616 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3616 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
INSOLVENCY PETITION E001 OF 2015
HM NYAGA, J
MARCH 20, 2025
THE INSOLVENCY ACT NO.19 OF 2015**

BETWEEN

IN THE MATTER OF H.E. AMB. MOHAMMED ABDI MOHAMMUD DEBTOR

AND

PROF. TOM OJIENDA & ASSOCIATES CREDITOR

RULING

1. The creditor herein filed a petition dated 21st November 2024 seeking orders that this Honourable Court issues a bankruptcy order in respect to the Estate of H. E. Ambassador Mohammed Abdi Mohammad (Debtor).
2. The creditor's case is that he successfully represented the debtor in Constitutional Petition No. 009 of 2021, consolidated with Petition No. E017 of 2021 *Ambassador Mohammed Abdi Mohamed and the Council of County Governors vs County Assembly of Wajir and the speaker, County Assembly of Wajir and others*.
3. That owing to the failure of the Debtor to settle the legal fees, the creditor filed an Advocate-Client Bill of Costs dated 9th May 2022. That the parties entered into a consent dated 27th October 2022 where the Bill of costs was taxed at an all-inclusive sum of Ksh. 6,000,000/- and would be paid in fair equal instalments of Ksh 1,500,000/- due every 5th day of the new month until payment in full. That the said consent order was adopted by the court on 10th November 2022.
4. It is further averred that the Debtor has failed to abide by the consent order and the Creditor extracted a decree and filed an application for execution. That a notice to show cause (NTSC) was duly issued by the court on 16th November 2023, inviting the Debtor to show cause why he should not be committed to civil jail for failing to pay the decretal sum of Ksh 6,000,000/-. That when the debtor appeared in court, he sought time to enable him pay the same but did not do so. That the Creditor has on several



occasions tried to reach out to the Debtor over the subject matter to no avail, and a warrant of arrest was issued on 6th June 2024. The same was not executed, so the creditor came to court in this matter. That a Statutory Demand was served on the debtor but he failed to honour it. That, on the lapse of 21 days after service of the Demand, the Creditor filed this petition. The Creditor thus prayed that the Bankruptcy order do issue as prayed.

5. When the matter came up for directions on 24th February 2025, one Mr Ngetich Advocate appeared for the Debtor. He sought time to file a response to the petition but to date, he has not done so.

Creditors submissions.

6. The Creditor, submitted that he has duly complied with the provisions of section 17 of the [Insolvency Act](#) in that:-
 - a. The Petitioner has specified the debt owed.
 - b. The debt remains unpaid since the Debtor undertook to repay the same on 2022.
 - c. The Statutory Demand has been duly served upon the Debtor.
 - d. That the Debtor is unable to pay the debt and is presumed unable to do so after the service of the Statutory Demand.
 - e. That the petition was duly filed after the Debtor failed to make payment within 21 days of issuance of the Statutory Demand.
7. It is further submitted that the debt owed to the Creditor is within the prescribed minimum value of Bankruptcy set out in Regulation 19 of the Insolvency Regulations.
8. The Petitioner thus prays that the court issues on Bankruptcy order against the Debtor.
9. Counsel cited the following authorities to buttress his case:-
 - a. [Re George Karayi](#) (Insolvency Cause No. 04 of 2019 [2023] KEHC 18165 KLR).
 - b. [Re Paul Kiwani](#) [2019] KEHC – 12267 [KLR].

Analysis and Determination

10. Section 25 of the [insolvency Act](#) grants this court the power to issue a bankruptcy order once the Creditor has complied with Section 17 of the [Act](#).
11. The said Section 25 of the [Act](#) provides as follows:-
 - (1) The Court may make a bankruptcy order in respect of the debtor if the creditor has complied with section 7.
 - (2) The Court may refuse to adjudge a debtor bankrupt if—
 - (a) the applicant creditor has not satisfied the requirements specified in section 17;
 - (b) the debtor is able to pay the debtor's debts; or
 - (c) it is just and equitable that the Court should not make a bankruptcy order.
12. Section 17 then lays down the conditions to be met before the order is issued it provides as follows:-

Creditor may apply for bankruptcy order in respect of debtor



- (1) One or more creditors of a debtor may make an application to the Court for a bankruptcy order to be made in respect of the debtor in relation to a debt or debts owed by the debtor to the creditor or creditors.
- (2) Such an application may be made in relation to a debt or debts owed by the debtor only if, at the time the application is made—
 - (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the prescribed bankruptcy level;
 - (b) the debt, or each of the debts, is for a liquidated amount payable to the applicant creditor, or one or more of the applicant creditors, either immediately or at some certain, future time, and is unsecured;
 - (c) the debt, or each of the debts, is a debt that the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay; and
 - (d) there is no outstanding application to set aside a statutory demand in respect of the debt or any of the debts.

13. I have considered the matter and I am satisfied that the Creditor has duly complied with the law under section 17. The debt owed has been specified. The debtor is unable to pay the debt and under the law is presumed to be unable to pay the debt as he did not comply with or apply to set aside the Statutory Demand.

14. I am also satisfied that the debt of Ksh 6,000,000/- together with interest is within the minimum value set out under Rule 19 of the Insolvency Regulation.

15. Consequently I make the following orders:-

- a. A bankruptcy order do issue in respect of the estate of H.E. Amb. Mohammed Abdi Mohammud.
- b. The Official Receiver shall be notified by the Deputy Registrar of this court of this order for the purpose of appointing a Bankruptcy Trustee under section 44(1) of the [Act](#).
- c. Costs of the Petition shall be borne out of the Debtor's Estate.

DATED, SIGNED & DELIVERED AT MERU THIS 20TH DAY OF MARCH, 2025.

H.M. NYAGA

JUDGE

