



Momanyi v Kountable Trading Limited; Mwananchi Credit Limited & another (Creditor) (Insolvency Cause E011 of 2023) [2025] KEHC 4667 (KLR) (Commercial and Tax) (10 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4667 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E011 OF 2023**

PM MULWA, J

APRIL 10, 2025

BETWEEN

ALFRED OMWANZA MOMANYI PETITIONER

AND

KOUNTABLE TRADING LIMITED RESPONDENT

AND

MWANANCHI CREDIT LIMITED CREDITOR

ANDREW MBURU T/A MUSEMBE TREATED TIMBER

INDUSTRIES CREDITOR

JUDGMENT

1. The petition dated 31st March 2023 was lodged by Alfred Omwanza Momanyi seeking a bankruptcy order against himself. The Petition is supported by his affidavit sworn on 31st March 2023 and the supplementary affidavit sworn on 13th January 2025. Additionally, the petition is accompanied by the Official Receiver's Certificate of Compliance dated 31st March 2023.
2. He contends he is a former businessman and was conducting business in the name and style of Cresta Investments Limited which was engaged in the supply of wooden power poles. The Petitioner avers that his aggregated debt, due and owing to his creditors, totals Kshs 47,729,964.00. He is unable to meet these financial obligations.
3. The Petitioner further contends he is indebted to several financiers, who have obtained various court decrees against him and Cresta Investments Ltd. The Petitioner affirms he is in the process of



liquidating the company as it is unable to pay its debts, and there are numerous debts claims against both the Company and him personally.

4. The Petitioner avers that he is currently not in a position to pay his creditors and that the overwhelming debt has severely affected his well-being. He further contends that his health has deteriorated significantly due to constant harassment and attacks from his creditors. Given the circumstances, the Petitioner respectfully urges the Court to grant him relief by issuing a Bankruptcy Order against him.
5. The Petition is opposed by the Respondent, Peter Gathongo, the Trade Specialist, who swore a replying affidavit on 3rd August 2024. In his affidavit, the Respondent avers that the Petitioner is indebted to the Respondent in the sum of Kshs. 61,964,250.00, as evidenced by the Warrants of Arrest dated 30th March 2023. The Respondent contends that the Petitioner is a person of means and capable of settling his debt, citing the Petitioner's affidavit of means dated 3rd October 2022, which was filed in the Nairobi Milimani High Court, Commercial Case No. E187 of 2020, between Kountable Trading Limited and Alfred Momanyi, Cresta Investments Limited and Another. The Respondent argues that the Petition for bankruptcy is a dishonest scheme intended to frustrate the execution of the warrant of arrest and is aimed at evading payment of the Petitioner's debts.
6. Two additional creditors, Mwananchi Credit Limited and Andrew Mburu trading as Musembe Treated Timber Industries, have also opposed the Petition. Mwananchi Credit Limited has filed a proof of debt, asserting that the Petitioner is indebted to the company in the sum of Kshs. 25,649,873.00 as of 5th September 2024.
7. Andrew Mburu, trading as Musembe Treated Timber Industries, avers that the Petitioner is indebted to him in the sum of Kshs. 239,636.00 as at 8th June 2023, pursuant to the Court's decree in Nakuru Small Claims Court Commercial Case No. E054 of 2022. He further contends that the instant Petition is made in bad faith and with material non-disclosure, seeking to evade his legal obligations.
8. The petition for bankruptcy was heard by way of written submissions, with only the Petitioner filing submissions dated 18th March 2025. The main issue for determination is whether the petition ought to be granted.
9. Under Section 32(1) of the *Insolvency Act*, 2015, 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. The provision provides as follows:

“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.”
10. Further, the provisions of Section 32(2) of the *Insolvency Act* outline the requirements that must be met by the petitioner as follows:

“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.”
11. The Petitioner admits owing a debt to the creditor but asserts that he is unable to pay the debt due to financial constraints. The Petitioner has provided an inventory of his assets and liabilities through his Statement of Affairs, which is annexed to the petition. According to the Statement of Affairs, the Petitioner's assets are valued at Kshs. 1,560,000.00 while his liabilities stand at Kshs. 47,729,964.00 as



at the time of filing the petition. In the absence of any other evidence, or contrary evidence, I am unable to conclude that the has not made full disclosure.

12. Notably, the Petitioner entered into a consent with the Respondent on 28th October 2022, wherein he undertook to pay the decretal amount in instalments of Kshs. 3,000,000.00 per quarter, commencing on 28th January 2023. However, no payments have been made in accordance with the consent, as the Petitioner asserts that he was unable to fulfill his obligation due to his inability to satisfy the debt.
13. It is evident that the Respondent, who holds a judgment against the Petitioner, has been unable to execute the decree. Similarly, the second creditor, Mr. Andrew Mburu, who also holds a decree against the Petitioner, has not been able to execute the decree. This failure to execute the decrees is indicative of the Petitioner's inability to pay his debts.
14. While it can be argued that the present petition was filed in bad faith and may be an attempt to evade execution of the decrees, the court has reviewed the evidence presented. The Petitioner's financial predicament is clear. The Petitioner is unable to satisfy his debts, and there is insufficient evidence to refute his claim of insolvency.
15. The purpose of bankruptcy proceedings is to protect the debtor from undue pressure from creditors, preserve fairness among the creditors, and discharge the debtor from his liabilities and enable him to start afresh (See *Osman v First Community Bank & 2 others (Insolvency Petition E037 of 2020) [2022] KEHC 13825 (KLR)*).
16. Having carefully considered the facts of this case, the applicable legal framework, and the submissions made by the Petitioner, I am satisfied that the Petitioner meets the criteria for being adjudged bankrupt under Section 32(1) of the *Insolvency Act, 2015*. The Petitioner has shown that he is unable to pay his debts and that his liabilities far exceed his assets.
17. In the circumstances, I allow the Petition dated 31st March 2023 by making the following orders:
 - a. Alfred Omwanza Momanyi be and is hereby adjudged bankrupt and a bankruptcy order is made against his estate.
 - b. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed to be the Bankruptcy Trustee in respect of the Debtor's Property.
 - c. The cost of the petition shall be borne out of the Debtor's estate.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Mwalagho for petitioner

Mr. Marwah for respondent

Mr. Mathenge for creditor

Court Assistant: Kadzo

