



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Matter of Francis Mburu Gathee (Insolvency Petition E004 of 2023)
[2025] KEHC 5800 (KLR) (Commercial and Tax) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5800 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E004 OF 2023**

PM MULWA, J

MAY 8, 2025

JUDGMENT

1. This matter involves a bankruptcy petition brought by Francis Mburu, director of Finch Animal Feeds, seeking to be adjudged bankrupt pursuant to the provisions of the *Insolvency Act*. The petitioner claims that he is unable to meet his financial obligations and is indebted to various creditors to the tune of Kshs. 6,250,000/=. Supporting affidavits and documents have been filed to substantiate the claim of insolvency.
2. The petition is opposed by Mary Ann Wangui, a director of Nutrinova Kenya Limited, who filed a replying affidavit on 3rd November 2023 asserting that the petition is frivolous, vexatious and non-compliant with the law. She specifically cites a case in Limuru MCCC No. 274 of 2019, where the petitioner agreed to repay Kshs. 50,000/= per month, indicating his capability to honor his debts. She also challenges the procedural compliance of the petition under Section 32(4) of the *Insolvency Act* and Regulation 18(4) of the Insolvency Regulations, noting the lack of advertisement of the petition in a newspaper.

Determination.

3. I have carefully considered the petition, the response thereto, and submissions advanced by both parties. Additionally, I have reviewed the relevant decisions cited by parties.
4. The primary issue before the court is whether the debtor is unable to settle his debts and, consequently, whether he should be declared bankrupt.
5. The law provides a debtor with an opportunity to seek relief from unmanageable debt through bankruptcy proceedings when he/she is genuinely unable to pay the debt. However, such petitions must be filed in good faith, accompanied by full material disclosures.



6. The test of insolvency is both factual and legal. As was held in *Re: Hans Raj Sudan* [2007] eKLR, insolvency must be demonstrated by showing that a debtor's liabilities, as a fact, exceed the value of his assets, and that he is unable to pay debts as they fall due.
7. A bankruptcy petition is a serious legal step, and courts have repeatedly cautioned against its abuse. In *Re: James Njenga Karume* [2006] eKLR, the court emphasized that "bankruptcy should not be used as a shield by debtors who are capable of repaying debts but seek to avoid lawful recovery through civil processes." It must not be used as a tool to defeat or delay creditors' enforcement rights under guise of insolvency.
8. Furthermore, bankruptcy proceedings are subject to strict procedural requirements. Section 32(4) of the *Insolvency Act* stipulates that a debtor who files for bankruptcy must publish 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.
9. Furthermore, Regulation 18(4) thereof requires the debtor to sign and date the 'statement of the debtor's financial position and arrange for the publication of the statement in the Kenya Gazette.
10. In the present matter, there is no evidence on record to demonstrate compliance with the mandatory publication requirements under Section 32(4) and Regulation 18(4). This omission is not a mere technicality. It goes to the root of the jurisdiction of this court to entertain the petition.
11. Moreover, the objecting creditor has demonstrated that the debtor had, in prior proceedings (Limuru MCCC No. 274 of 2019), committed to a repayment plan of Kshs. 50,000/= per month, which suggests the debtor is not altogether without means. The petitioner has not provided updated financial statements or other concrete evidence to support his claim of insolvency.
12. Having considered all the material placed before the court, I am not satisfied that the debtor has demonstrated actual insolvency as required under the law. There is also a material non-compliance with mandatory statutory procedures, which disentitles the petitioner from the relief sought.
13. Accordingly, and for the foregoing reasons, I find that the Debtor's Petition is devoid of merit. It is hereby dismissed with costs to the Creditor.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY 2025.

PETER M. MULWA

JUDGE

