



REPUBLIC OF KENYA



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**In re Prakash Babubhai Patel (Insolvency Cause 1 of 2021)  
[2025] KEHC 5892 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5892 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
INSOLVENCY CAUSE 1 OF 2021**

**JK SERGON, J**

**MAY 8, 2025**

**IN THE MATTER OF  
PRAKASH BABUBHAI PATEL ..... DEBTOR**

***(Judgment IN THE MATTER OF SECTION 32 AND 33 OF THE INSOLVENCY  
ACT, 2015 AND RULE 18 OF THE INSOLVENCY REGULATIONS, 2016)***

**JUDGMENT**

1. Prakash Babubhai Patel the debtor petitioner filed a debtors Petition dated 8.12.2021 pursuant to the provisions of sections 32 and 33 of the *Insolvency Act* 2015 and Rule 18 of the Insolvency Regulations 2016, seeking for a Bankruptcy Order to be made against him in respect to his estate and for him to be adjudged bankrupt. In support of the Petition, swore a Supporting Affidavit on 8.12.2021.
2. Accompanying the Petition is the Petitioner's Statement of Affairs under Rule 18(2)(c) of the Regulations reflecting assets worth Kshs. 352,028.05/- and liabilities in the amount of Kshs. 80,556,731.75/-.
3. The Petitioner has also filed an Application seeking for appointment of a Bankruptcy Trustee pursuant to the provisions of Rule 15(2) (c) of the Insolvency Regulations. In compliance with the provisions of Section 32 (3) (a) of the *Insolvency Act* and Rule 18(4) of the Regulations, the Petitioner has published these proceedings in the Kenya gazette and also on the standard newspaper and the said notices are annexed in the Petitioner's Further Affidavit sworn on 17<sup>th</sup> January 2022 and marked as "PBP A" and "PBP B".
4. The provisions of Section 32 of the *Insolvency Act* provides that a Debtor may make an application before the Court for an order adjudging the Debtor bankrupt only on grounds that he is unable to pay his creditors. The Petitioner at the moment owes Kshs. 80, 556,731.75/- to the Estate of Shailesh Babhubhai Patel his late brother pursuant to a Court Decree issued on 29<sup>th</sup> October 2021 in High Court Commercial Suit No.413 of 2014 between Jayshriben Shailesh Patel (suing as administratrix of



the Estate of Shailesh Babhubhai Patel vs Prakash Babhubhai Patel filed at the High Court Milimani Nairobi.

5. Jayashriben Shailesh Patel the creditor filed a replying affidavit in support of her case, stating that she knows the Petitioner very well and that he is not being honest as he has failed to declare so many things like shares he is having in various companies and the expected income from some of the cases he is been involved in and attached a list of the cases in a bid to prove that the assets indicated by the Petitioner in his Petition are not conclusive and the list is distorted with the sole aim of frustrating her and to deny her the fruit of her Judgment. She therefore urged this Court to scrutinize the Petition placed herein critically and dismiss the same in the interest of justice since this Petition has not been lodged in good faith and further that the Petitioner should not be allowed to unjustly enrich himself at her detriment being that even the accounts he has tabled before this Court are not only the Bank accounts he has been operating.
6. The petitioner filed a further replying affidavit in response to the creditors replying affidavit and avers that he declared in the statement of affairs that he filed in this Court all the assets and liabilities that are in his names and he did not conceal any assets especially shares in several companies as alleged by the Creditor.
7. He avers made reference to the several judgments mentioned and annexed by the creditor delivered in several cases involving Kipsigis Traders Ltd and that they had not received money from the said judgments except the amount of Kshs.874,488/- which was received by the Advocates and was not forwarded to the company as it was utilized to settle the outstanding legal fees.
8. He further denies the allegations by the creditor and reiterated that he had declared all his assets and liabilities in his Petition and the annexed documents and had therefore not concealed any information relating to any assets belonging to him or Kipsigis Traders Ltd.
9. He further avers that in the Petition, he annexed the bank statements of all the bank accounts that he has been operating contrary to the creditor's allegations.
10. This Court had initially given directions for the bankruptcy petition to proceed by way of written submissions but pursuant to the ruling delivered on 16<sup>th</sup> December, 2022 by Lady Justice Ongeri, the Court gave directions for the Petition to proceed viva voce and for parties to file witness statements and documents if need be.
11. Pw. 1 the petitioner stated that he filed a debtors petition dated 8.12.2021, statement of affairs and an affidavit supporting the petition alongside several further affidavits. The petitioner stated that he filed a witness statement which he wished to adopt as his evidence in chief and produced a bundle of documents which this court marked as PExh. 1-12.
12. On cross examination, Pw. 1 stated that when he joined Kipsigis Traders he found that his two brothers, son and wife were shareholders. He stated that by the time he left the country to seek medical treatment in India warrants of arrest had been issued. He confirmed that Kipsigis Traders does not have shares in different companies and that the last time annual returns were filed in respect of Kipsigis Traders was in 2019 and therefore in 2020 no accounts were prepared. He confirmed that his hospital bills were catered to by his brother-in-law, however, he had no documentation to prove that his bills were catered to by his brother-in-law. He stated that his sister-in-law had filed a case against him. He stated that Kipsigis Traders was not making money since he took over. He confirmed that the assets of Kipsigis Traders at the time included a house worth Kshs. 25 million, warehouse worth Kshs. 12 million, motor vehicle worth Kshs. 5 million and stocks worth Kshs. 5 million. He confirmed that the bank sold the



house pursuant to the statutory power of sale on account of insolvency due to loss of income, bad debts further exacerbated by the relationship breakdown within the family.

13. On re-examination, Pw. 1 confirmed that when he joined Kipsigis Traders as a director, he was informed about the shares due to his late brother -in -law. He confirmed that he left Kenya to seek medical treatment before the warrants of arrest were made. He confirmed that he had promised to pay his sister -in -law after she obtained a decree in her favour, and that to date he has not paid anything. He confirmed that he did not include the annual returns of 2020 because no accounts were prepared that year. He confirmed that there is no documentary evidence that shares of Shailesh are worth Kshs. 180,000/= were transmitted to him by his widow. He confirmed that there is an agreement for sale over the godown. Kipsigis Traders had financial problems and there was need to sell the godown and that it was sold on 15.9.2016 and further that the motor vehicle was subsequently sold off. He confirmed that Kipsigis Traders is operating on rented premises and that there is on record a notice terminating the tenancy. He confirmed that previously declared a rental income in 2018 of Kshs. 608, 000/= was in respect to L.R No. 631 a building which was taken away.
14. Pw. 2 stated that the debtor/petitioner is his brother -in-law and that he has hosted him since he came to India for medical treatment and pays for the treatment.
15. On cross examination, Pw. 2 confirmed that he did not have any documentation as proof of payment. He stated that the debtor/petitioner does not own any company. He stated that he was not aware of any of the properties owned by the debtor/petitioner in Nairobi and that his brother -in- law did not have a source of income. He stated that the debtor/petitioner did not disclose the proceeds of the sale of the house in Kericho.
16. At the close of the debtor/petitioner's case the creditors testified in support of her case against the debtor/petitioner.
17. Dw. 1 who currently resides in the United Kingdom stated that she made an affidavit dated 24.5.2024 and adopted the contents thereon as her evidence in chief. She stated that the petitioner did not disclose everything to this court and that Dw.1 left everything, including a house to the debtor/petitioner before she relocated to London. She stated that she did not know who owns Kipsigis Traders and that at the time she relocated the company was owned by her husband.
18. On cross examination, she confirmed that the debtor/petitioner is her husband's brother. She stated that the debtor/petitioner has control of Kshs. 180,000/= which are shares belonging to her late husband. She referred to a record of minutes of the meeting held on 4.5.2008 which she had relied on in the High Civil Case No. 413 of 2014 at Nairobi, in the said meeting which was attended by several people including the debtor/petitioner and the company auditor, it was resolved that she was to paid Kshs. 54 million by Kipsigis Traders and the Prakash the debtor and petitioner herein. She stated that when she relocated she was paid 17,000 pounds. She stated that she had agreed to sell her shares in the company to the debtor and petitioner and that she signed the transfer document. She stated that Prakash the debtor/petitioner owns several properties and failed to disclose the same to this court, however, she did not furnish this court with any documentary evidence to support this assertion.
19. On re-examination, she reiterated that Prakash the debtor and petitioner is not a pauper and that she was meant to be paid her late husband's shares in Kipsigis Traders.
20. The court directed the parties to file and exchange written submissions.
21. The petitioner complied and filed his submissions and contended that when a Court is presented with a Petition pursuant to the provisions of Section 32 and 33 of the *Insolvency Act* and Rule 18 of the Regulations thereunder, the only issue to be determined is whether the Petitioner has met the



conditions to warrant the granting of a bankruptcy order and that the condition required for the order to be granted as was held and applied in the case of *Re Akbarali Karim Kurji*, Insolvency cause No.12 of 2016 (2017) eKLR, is that the requirement of section 32 must be met which provides that “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.” and the case of *Re Ali Jillo Fallan*, Insolvency Cause No.6 of 2018 (2021) eKLR where the Court stated; “The policy underpinning insolvency legislation and practice is that a debtor is entitled to seek relief from unmanageable debt through bankruptcy if the debtor is unable to resolve his or her financial difficulties through other means. However, bankruptcy is regarded as an option of last resort because it has serious consequences. Even though it is imperative that a debtor be shielded through a bankruptcy order, the Petition must be made in good faith and there should be no material non-disclosure. There must be clear proof of actual insolvency. The Petitioner’s case must firmly be asserted in the founding affidavit. The assertion must demonstrate that the Petitioner is “factually and commercially” insolvent. But commercial insolvency, another way of saying that a debtor cannot pay his debts as and when they fall due for payment, is no more than an onus shifting device, which then burdens the debtor to show that his assets exceed his liabilities. It does not serve as a standalone ground for an insolvency order to issue.”

22. The Petitioner reiterated that this Petition has been filed in good faith, there is no material non-disclosure and that he has presented in the documents filed in Court, clear proof of his insolvency as his assets as declared in the statement of affairs are way less than his outstanding liabilities and he has no means of income and has no hope of the same due to his advanced age which makes it difficult for him to find employment and contended that the Respondent has not brought any evidence to proof any form of material-non-disclosure by the Petitioner.
23. The Petitioner contended that he has not filed this Petition to serve some collateral or ulterior purpose and he has not acted in a manner that is purposed to frustrate the decree holder and in the circumstances, the Petitioner prays for this Court to find that he is fit in the interest of justice to be adjudged bankrupt on grounds that he is unable to pay his creditor.
24. The creditor filed her submissions and contended that the petitioner herein filed this petition urging this Court to make a bankruptcy order in respect to his Estate and for him to be adjudged bankrupt and that for a Court of Law to issue bankruptcy order then the Petitioner must comply with the Provisions of the Law which requires him to disclose some specific matters as regulation 18 of the Insolvency Regulations 2016. The creditor is adamant that it is apparent that the Petitioner is only trying to defeat the ends of Justice as it can be observed that none of the funds realized from either the sale of the Company assets or from award granted by the Court was not used to pay the Creditor herein and no good explanation has been offered as to where the funds were going to. The creditor maintains that while this Court can issue bankruptcy order in deserving cases, the process should not be used to defeat the ends of justice as what is being witnessed in these proceedings and cited that *In Re Johnson Mwendwa Mutengi (Debtor/Applicant) 2022 KEHC 15657 KLR* it was held that it ought to be remembered that bankruptcy orders are aimed to give a distressed debtor a second chance where it is shown that the Application is made in good faith and the applicant is factually and commercially insolvent. In short, the debtor has the onus to show that his liabilities exceed his assets and he/she is unable to pay his debts as and when they fall due for payment. The creditor reiterated that an underserved application like this one should be dismissed at once if it is clear that the motive is to attain a collateral objective of granting protection to undeserving debtors. A debtor who is able should not be allowed to use the bankruptcy process to avoid obligations or as a stalling device.
25. Having considered the pleadings, viva voce evidence and submissions by the parties, this court finds that the sole issue for determination is whether to issue a bankruptcy order.



26. On one part, the debtor/petitioner maintained that he has declared all his assets and liabilities in his statement of affairs and has not withheld any assets. Kipsigis Traders, the company in question has been making huge losses and has accrued several debts and in a bid to pay the outstanding debts, all the Company's immovable and movable assets were sold to meet some of the debts and that he had not neglected and/or reneged pay the decretal amount but is unable to due to lack of funds and after the business closed due to financial constraints.
27. On the other part, the creditor was adamant that there was a decree in her favour in High Civil Case No. 413 of 2014 at Nairobi and that the decretal sum was to be paid out to her by the Kipsigis Traders and the debtor/petitioner. The respondent maintained that Prakash the debtor/petitioner owns several properties and failed to disclose the same to this court.
28. This court has considered the respective cases by the parties. Having looked into into the merits of the Petition, this court finds that the petitioner has established a prima facie case that the liabilities as a fact exceed his assets, this finding is further supported by the absence of any documentary evidence in support of the creditor's assertion that the petitioner had concealed and failed to disclose his properties to this court. This court also finds that the debtor's petition is in conformity with the substantive law and regulations. In re James Maina Kabatha (Debtor/Applicant) NKR Insolvency Cause No. 4 of 2019 [2020] eKLR, the court observed 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.' The learned judge adds that:
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 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 thresholds for individual Petitioners."
29. 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. Having considered the statement of affairs filed by the debtor reflecting assets worth Kshs. 352,028.05/- and liabilities in the amount of Kshs. 80,556,731.75/-. I find that there is sufficient evidence that the Petitioner is unable to pay his debts. As stated before, it is trite that in order for a debtor to be shielded through a bankruptcy order, the petition must be made in good faith and there should be no material non-disclosure. I do not find any reason to conclude that there has been material non-disclosure.
30. Flowing my discussion herein above, it is my finding that the instant Petition is merited. I hereby allow the Debtor's Petition dated 8th December, 2021 with the following consequential orders;



- (i) Prakash Babubhai Patel be and is hereby adjudged bankrupt and a bankruptcy order is made against his estate.
- (ii) 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.
- (iii) Cost of the petition shall be borne out of the Debtor's estate.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 8<sup>TH</sup>**

**DAY OF MAY, 2025**

**J. K. SERGON**

**JUDGE**

