



**Said & 2 others v Said (Bankruptcy Cause 1 of 2010)
[2025] KEHC 5833 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5833 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
BANKRUPTCY CAUSE 1 OF 2010**

M THANDE, J

MAY 9, 2025

BETWEEN

ZAKI ABDULRAHMAN SAID 1ST CREDITOR

ABUBAKAR AH MOHAMED 2ND CREDITOR

AMOS K LIMITED 3RD CREDITOR

AND

AHMED MOHAMED SAID APPLICANT

RULING

1. By a Notice of Motion dated 12.4.24, the Bankrupt/Applicant seeks the following orders:
 1. Spent.
 2. That there be a temporary stay of execution of the warrant of seizures issued pending the hearing and determination of this application inter-partes.
 3. Spent.
 4. That upon inter-partes hearing, the warrant of seizure issued herein be discharged and/or set aside.
 5. That this Bankruptcy cause and/or this file be marked as closed.
 6. That costs to this application be provided for.
2. The Bankrupt/Applicant's case is that by a ruling dated 23.6.17, the Court adopted a consent dated 18.12.13 as an order of the Court. The Bankrupt/Applicant was directed to pay the 2nd Creditor the sum of Kshs. 150,000/= which was the due and owing. He delivered to the 2nd Creditor a banker's cheque for the said amount through the Deputy Registrar thereby settling the debt owed. He then



cleared with the other 2 creditors who have confirmed the same to the Court and the file ought to be closed. The Bankrupt/Applicant further stated that in spite of settling the amounts owed, the 2nd Creditor applied for and obtained seizure warrants, the discharge of which he now seeks. He further stated that in a letter dated 9.11.21, the Deputy Registrar wrote to the OCS Malindi Police Station confirming that the matter is settled. As such, it was an oversight for the Deputy Registrar to issue the seizure warrants.

3. In a replying affidavit sworn on 20.4.24, the 2nd Creditor averred that he is trustee of the Bankrupt/Applicant's property and not a judgment creditor. He averred that it is improper for the Bankrupt/Applicant to bring a suit against his trustee who is above him. He contended that the present application is filed in violation of the Bankruptcy Act. He further stated that the Court cannot dismiss the warrants of seizure until all dues are paid to him together with costs. Further, that the Bankrupt/Applicant has not specified the warrants of seizure to be cancelled as several have been issued. He stated that Chitembwe, J. cancelled the warrant of seizure dated 14.7.17 while that of 21.7.15 is still valid. The 2nd Creditor further claimed that the consent is forged and that the signature is not his and that the same was filed without his consent. He urged that the Application be dismissed with costs.
4. I have carefully looked at the record and note that in the ruling dated 23.6.17, Chitembwe, J. was satisfied that the 2nd Creditor entered into the consent in which he accepted the sum of Kshs. 600,000/= as settlement of his claim against the Bankrupt/Applicant. The learned Judge found that the consent was binding upon the 2nd Creditor. The learned Judge was further satisfied that the 2nd Creditor had been paid Kshs. 450,000/= which was witnessed by the Assistant Chief of Barani sublocation in Malindi. The learned Judge adopted the consent as an order of the Court and directed that the balance of Kshs. 150,000/= be deposited in Court and granted the 2nd Creditor the liberty to apply for release of the same. If the 2nd Creditor was aggrieved by the ruling, his remedy lay in appealing against the same in the Court of Appeal.
5. In compliance with the consent order, the Bankrupt/Applicant deposited a banker's cheque dated 2.8.17 for Kshs. 150,000/= in the name of the Deputy Registrar High Court at Malindi. There is also a letter from the Deputy Registrar to the OCS Malindi Police Station confirming that the matter is settled. I am satisfied from the record that the Bankrupt/Applicant has fully settled the amount due to the 2nd Creditor.
6. In his ruling, Chitembwe, J. noted the 2nd Creditor's conduct and stated that he "seems to be enjoying his status. He has been seeking to be recognized as a trustee and not a judgment debtor. He has made several applications for appointment of trustees and thereafter applied to have the trustees removed. Equally, he has appointed advocates who served short stints in the matter and were shortly debriefed. The judgment creditor sought to be his own trustee and also appeared for himself. He has made several application (sic) in this old matter and according to my own observations, he is out to stretch the dispute to as long as he would like it to last.
7. I concur with the learned Judge. This matter is 15 years old. The 2nd Creditor's claim against the Bankrupt/Applicant was duly settled but the 2nd Creditor continues to pursue the Bankrupt/Applicant. It is noted that while the 2nd Creditor has opposed the Application, he has not stated the amount he claims to be due to him from the Bankrupt/Applicant to justify his opposition to the Application. By opposing the present Application therefore, and further maintaining that the consent was forged notwithstanding the ruling of 23.6.17, it would appear that the 2nd Creditor is just out to endlessly vex the Bankrupt/Applicant.
8. Curiously, in spite of claiming that consent was forged, the 2nd Creditor has in his submissions asked the Court to order the transfer to his advocates, of the Kshs. 150,000/= deposited in Court by the



Bankrupt/Applicant. The 2nd Creditor cannot be permitted to approbate and reprobate. He cannot on the one hand say that the consent was forged and at the same time seek release to his advocates of moneys deposited in Court pursuant to the said consent. When a party makes a choice between 2 courses of conduct, he is to be treated as having made an election from which he cannot resile (see *Halsbury's Laws of England* (4th ed. Reissue 2003) Vol. 16(2) at para. 962).

9. Having found as I have, that the Bankrupt/Applicant has settled the amount outstanding to the 2nd Creditor, there is no justification for any warrant of seizure against the Bankrupt/Applicant to remain in place.
10. In the end, I find that the Application is merited and I allow the same on the following terms:
 - i. The warrant of seizure issued against the Bankrupt/Applicant herein is hereby discharged and set aside.
 - ii. The costs of the Bankrupt/Applicant shall be borne by the 2nd Creditor.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 9TH DAY OF MAY 2025

M. THANDE

JUDGE

