



REPUBLIC OF KENYA



**In re Satya Bhama Gandhi (Insolvency Cause E027 of 2024)  
[2025] KEHC 11068 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11068 (KLR)

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

**INSOLVENCY CAUSE E027 OF 2024**

**PM MULWA, J**

**JULY 24, 2025**

**IN THE MATTER OF THE INSOLVENCY ACT, NO. 18 OF 2015**

**AND**

**IN THE MATTER OF A BANKRUPTCY PETITION BY SATYA BHAMA GANDHI**

**RULING**

1. Before the Court is the Notice of Motion dated 18<sup>th</sup> September 2024 brought by the Applicant, Satya Bhama Gandhi, contemporaneously with a bankruptcy petition dated 10<sup>th</sup> September 2024. The application seeks an order for stay of proceedings in HCCOMM 171 of 2014 (consolidated with HCCC 20 of 2016), HCCA 34 of 2018 and MCCC 2663 of 2019 pending the hearing and determination of the Applicant's bankruptcy petition.
2. The factual foundation of the application is set out in the supporting affidavit of the Applicant, sworn on 18<sup>th</sup> September 2024. The Applicant avers that he is the sole surviving director of the now-dissolved Mits Electrical Company Limited. He contends that he has been sued personally in his capacity as guarantor for banking facilities advanced by UBA Kenya Bank Limited, Bank of Africa and Transnational Bank to the said company. He states that final judgments have been entered against him in the referenced suits, holding him liable for significant amounts in decretal sums, accrued interest and legal costs. The Applicant states that he is unable to settle these debts, has no attachable assets of value, and that the company's bank accounts were closed long ago. On this basis, he seeks to invoke the protection of the insolvency process and urges the Court to stay all enforcement actions pending determination of his bankruptcy petition.
3. The application is opposed. Bank of Africa filed a Replying Affidavit sworn by Jacqueline Mureithi on 27<sup>th</sup> January 2025. It is deposed that judgment has already been delivered in HCCA No. 34 of 2018, and as such, there are no active proceedings to be stayed. Further, it is argued that the application is devoid of merit and does not meet the threshold for grant of a stay.



4. UBA Kenya Bank Limited similarly opposed the application on the grounds of opposition dated 22<sup>nd</sup> October 2024, asserting, inter alia, that:
  - i. The application is premature and procedurally flawed as no banking order has been issued.
  - ii. The application is brought in the wrong forum
  - iii. The application fails to demonstrate sufficient grounds for a stay.
  - iv. The application lacks merit and substantive justification.
  - v. The application prejudices the rights of the Respondent.
5. The application was canvassed by way of written submissions, pursuant to directions issued by the Court. I have considered the application, the affidavits, the grounds of opposition and the rival submissions by counsel.

### **Analysis and determination**

6. The main issue for consideration is whether the application is merited.
7. Under Section 32 of the *Insolvency Act*, a debtor is entitled to seek the protection of bankruptcy where they are unable to pay their debts. In order not to undermine the objectives of insolvency, the Act allows for stay of execution by the High Court, once a bankruptcy petition has been filed.
8. Section 23 (2) of the Act provides as follows:

If it is proved to the issuing court that an application for a bankruptcy order in respect of the debtor has been made to the High Court, that court may either—

  - (a) stay the execution process on such terms as it considers appropriate; or
  - (b) permit the execution process to continue on such terms as it considers appropriate.
9. The guiding legal framework is found in Section 11 of the *Insolvency Act*, 2015, which empowers the Court to make any interim orders as it deems fit for the preservation of the estate of a debtor, or to facilitate the orderly determination of insolvency proceedings. Further, Regulation 10(1) of the Insolvency Regulations, 2016 provides that an insolvency petition does not of itself operate as a stay of legal proceedings against the debtor unless and until the Court grants such an order.
10. However, the discretion to stay proceedings must be exercised judicially and sparingly, and only where compelling reasons are advanced. In *Re Matter of the Insolvency of George Mbutia Maina* [2021] eKLR, the Court held:

“A stay of proceedings under the *Insolvency Act* is not automatic upon the filing of a petition. The applicant must demonstrate a prima facie case that the stay is necessary for the effective administration of the bankruptcy process and that no prejudice will be occasioned to the creditors.”
11. The applicable test in such instances aligns with the general principles on the grant of interlocutory injunctive relief as laid out in *Giella v Cassman Brown & Co. Ltd* [1973] E.A. 358, which require the Applicant to demonstrate a prima facie case, that irreparable harm would result if the stay is not granted, and that the balance of convenience tilts in favour of the Applicant.



12. In the present case, the Applicant has demonstrated that he is the subject of multiple execution proceedings arising from guarantees issued on behalf of a company that is no longer in existence. He has formally petitioned for bankruptcy, asserting that he is insolvent and unable to satisfy the judgments against him. While it is true that some of the cited proceedings may have been concluded, the record before the Court indicates that enforcement action remains live and ongoing.
13. The Respondents have raised procedural objections, including that the application is premature. Under Section 11 of the Act, an interim stay may be granted even before a bankruptcy order is issued, provided the petition is properly before the Court and the circumstances justify intervention. The argument that the wrong forum has been approached is also unconvincing, as the insolvency jurisdiction of this Court permits incidental reliefs pending determination of the petition.
14. Ultimately, I am satisfied that the Applicant has met the threshold for the grant of an interim stay so as to allow for the petition to be heard.
15. On a balance of probabilities, the pending petition would be rendered irrelevant if the orders sought are not granted, which would undermine the bankruptcy process.
16. In the circumstances, I allow the application dated 18<sup>th</sup> September 2024.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Mr. Esilaba for Petitioner/Applicant

Ms. Saadia Effendi for Transnational Bank

Mr. Muchiri for UBA Bank – a Creditor

Court Assistant: Carlos

