



**In re Joseph Kabuya (Insolvency Cause E017 of 2025)
[2025] KEHC 10723 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10723 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E017 OF 2025**

F GIKONYO, J

JULY 3, 2025

IN THE MATTER OF JOSEPH KABUYA

RULING

1. The petitioner, Joseph Kabuya, filed the Debtor's Petition dated 20th December 2024, seeking for a bankruptcy order to be made in respect of his estate and that he may be adjudged bankrupt.
2. Alongside the petition, the petitioner filed the notice of motion date 24th April 2025, seeking leave to publish the Bankruptcy Petition in a newspaper with nationwide circulation. He also seeks an order to stay the execution and/ or any proceedings relating to the execution of all decrees issued against the petitioner pending the hearing and determination of the application and petition.
3. The application is premised on the following grounds:-
 1. From July 2016 to June 2024, the petitioner was carrying on business under Tradeline Auto World Limited where he was a director and shareholder.
 2. In his capacity as director, he used to import motor vehicles and sell them locally for profit.
 3. At all material times, his salary from Tradeline Auto World Limited was his main source of income and means of sustaining the family.
 4. Between 2022 and 2023, the petitioner sent money to companies overseas, namely, Autocraft Japan Limited and Kobe Motor Company, to buy motor vehicles. However, the two companies did not honour their obligations.
 5. The said motor vehicles were never shipped to Kenya and the clients who had paid the company filed both civil suits against the company and lodged criminal complaints against the petitioner.
 6. The petitioner used the remainder of the company's funds to defend the company and run its affairs, and as a result, his cash flow was negatively affected.



7. Since then, the petitioner stated that, he has been unable to stay afloat and meet his financial obligations due to debts, ongoing court cases and challenging economic conditions, which has made it impossible for the company to pay his salary.
8. Several cases have been instituted against the company and decrees extracted and/ or execution proceedings commenced.
 - a. In CMCC/E019/2023 (Kiambu) *Job Wanjobi Mugo v Tradeline Auto Ltd And Joseph Kabuya Thinwa*
 - b. In MC.CC/7182/2015 *Charles Gatoru Kamiti Wangui v Esjoe Marketing Holdings Limited & Joseph Kabuya Thinwa* judgment was entered for the plaintiff inter alia for the sum of Kshs. 1,248,000/= with interests at court rates from the date of filing the suit on 17th January 2025.
 - c. In SCCOMM/E6369 OF 2023 (Milimani Commercial) *Catherine Njeri Kinyanjui v Tradeline Auto World Limited*, the claimant has moved the court to lift the veil of incorporation to realize against the Applicant, the decretal sum of Kenya Shillings Nine Hundred and Thirty Eight Thousand One Hundred and Ninety Six (Kshs. 938,196/-) and commit the petitioner to civil jail.
 - d. SCCOMM/E1225/2023 *ELys Kanana v Tradeline Auto World Limited*, the plaintiff has obtained a decree for the sum of Kenya Shillings One Hundred and Forty Seven Thousand, Four Hundred and Nine plus cost of Kenya Shillings Forty Seven Thousand, Seven Hundred against the petitioner.
 - e. SCCOMM/E914/2023 (Milimani Commercial) *Andrew Wambari Thumbi v Joseph Kabuya Thinwa*, the claimant moved the court for warrants of arrest against the petitioner.

Analysis and Determination

4. The petitioner seeks for leave to publish the petition for bankruptcy and a stay of execution of all decrees and warrants against him pending the hearing and determination of the bankruptcy petition. Are these orders merited?

Leave to publish the bankruptcy petition

5. The petitioner claims he cannot pay his debts. He has filed a debtor's application under section 32 of the [Insolvency Act](#).
6. He has also annexed Certificate of Compliance from the Official Receiver confirming that he has filed and submitted to the Official Receiver the prescribed forms and paid the mandatory deposit of Kshs. 30,000.
7. The law prescribes certain pertinent requirements in section 32 of the [Insolvency Act](#) for a debtor's application for an order adjudging the debtor bankrupt.
8. Such application is made only on the ground that the debtor is unable to pay the debtor's debts. The application should be accompanied by a statement of the debtor's financial position containing correct, accurate and complete details of: (a) 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. Section 32 of the [Insolvency Act](#)



9. These requirements provide basis for the court to entertain a debtor's application under section 32 of the [Insolvency Act](#) and test it against the threshold provided. These procedural and substantive requirements are safeguards against abuse of the process of insolvency by unscrupulous debtors who deliberately intend to avoid paying their debts or forestall lawful execution of decree of court against them.
10. I have not seen any statement of the debtor's financial position in the sense of section 32 of the [Insolvency Act](#).
11. I do note also that the petitioner stated that several cases have been instituted against the company and decrees extracted and/ or execution proceedings commenced. This fact obscures whether these are his debts or the company's debt- an aspect that will also reign heavy in considering the quest for stay of execution.
12. Accordingly, the court should decline to hear this application in accordance with section 32(5) of the [Insolvency Act](#).

Of stay of execution

13. The court has the discretionary power to grant stay of execution upon the filing of a bankruptcy petition. Although Section 23 of the [Insolvency Act](#) applies to creditor's petitions, not debtor's petitions, which fall under Division 3, courts have expressed the view that the 'court retains inherent powers to issue orders that are necessary and intended to meet the ends of justice'. [In re Jai Prakash Mishra](#) (Insolvency Cause E007 of 2021) [2022] KEHC 11075 (KLR) (Commercial and Tax) (29 July 2022) (Ruling),
14. Section 23 of the [Insolvency Act](#) provides: -

" 23
 - (1) This section applies if an execution process has been issued by a court other than the High Court.
 - (2) 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 on such terms as it considers appropriate; or
 - (b) permit the execution process to continue on such terms as it considers appropriate."
15. Courts underscore, the purpose of a stay of execution is to preserve the objectives of insolvency, while balancing between the interests of debtors and those of their creditors. [Re Katherine Silva Gow Monthy](#) (Insolvency Cause E015 of 2023) [2024] KEHC 11007 (KLR) (Commercial and Tax) (20 September 2024) (Ruling).
16. I have considered the application and the evidence on record. The petitioner exhibited a copy of the decree in CMCC E019 of 2023, a copy of the judgment in MC.CC7182/2015 and a copy of an application seeking to lift the corporate veil in SCCOMM/E6369 of 2023. A list of cases forming the basis of the application has been provided.



17. The applicant has stated that, several cases have been instituted against the company and decrees extracted and/ or execution proceedings commenced.
18. Except SCCOMM/E914/2023, in all the other cases, the company is a defendant. Care should be taken to avoid a situation where a director takes out a personal bankruptcy cause to shield the company from paying its debts or from lawful execution of court decrees. Unlike in partnerships, I doubt that a director could apply for bankruptcy on the basis of the company debts. This fact does not change because an application to lift the corporate veil is pending in court. Notably also, the court has not been told whether there is an insolvency cause upon the company.

Conclusions

19. I have declined to hear the application on the basis on non-compliance with section 32 of the *[Insolvency Act](#)*.
20. In the circumstances of this case, it is not appropriate to stay execution of decrees in the cases herein especially noting that the company is a judgment debtor- alone or jointly and or severally with the applicant.
21. I direct the applicant to file a statement of the debtor's financial position in accordance with section 32 of the *[Insolvency Act](#)* and provide details on his personal liability in each case, within 14 days. The court will consider the application upon compliance with these orders.
22. Matter be mentioned on a date to be appointed by the court.
 - (1) No order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 3RD DAY OF JULY, 2025

.....

F. GIKONYO M.

JUDGE

In the presence of: -

1. Lwanga for Petitioner
2. Kinyua C/A

