



REPUBLIC OF KENYA



KENYA LAW
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**In re Jonathan Karanja (Insolvency Cause E004 of 2022)
[2024] KEHC 4521 (KLR) (Commercial and Tax) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 4521 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E004 OF 2022
DO CHEPKWONY, J
MARCH 8, 2024**

RULING

1. What is before the court for determination is the Notice of Motion application dated 22nd July, 2022 filed under Section 304, 305 and 306, all of the [Insolvency Act 2016](#) seeking the following orders:
 - a. Spent.
 - b. That the Applicant herein be granted stay of execution of the decree and the warrant of arrest issued at Nairobi HCCC No. 301 of 2014 on 16th May 2022 be lifted and/or set aside.
 - c. That this Honourable Court do grant stay of any action, execution or other legal processes against the property and person of the debtor pending determination of these proceedings.
 - d. That the official receiver be appointed as supervisor of the Debtor's proposed composition /scheme of arrangement.
 - e. That costs of this application be provided for.
2. The Application is based on the Supporting Affidavit of Jonathan Karanja sworn on July 22, 2022 and the grounds as set out on its face are as follows:-
 - a. That execution proceedings have been commenced in Nairobi HCC 301 of 2014 where he is the Judgment Debtor and a warrant of arrest was issued on 16th May, 2022.
 - b. That the Applicant owes a cumulative debt of Kshs. 25,705,602.85 being the decretal amount awarded against the debtor.



- c. That the Applicant has applied for a receiving order and has since been issued with a compliance certificate.
 - d. That the Applicant is apprehensive that might be arrested at any time , pursuant to the said warrant that was issued on 16th May, 2022.
 - e. That the Applicant stands to lose his liberty as a result thereof and its therefore imperative that this honourable court do admit his application for hearing.
 - f. That the application seeks to place his estate under the management of the receiver in order to protect his freedom as currently he is unable to raise any monies to liquidate his debts.
3. The Application was unopposed but the court still called has a duty to consider the merits thereof. The Applicant filed Submissions dated 2nd December, 2022 which the court has taken into considered.
 4. According to the Applicant, he is unable to meet his financial obligations and has filed these proceedings seeking to be adjudged bankrupt. He holds that he made full disclosure of his assets and liabilities and has come to court with clean hands. The Applicant holds that he needs protection from the execution process by the court as he is not in financial position to offset the debt which is quite substantial.
 5. It is the Applicant’s contention that the order for imprisonment to civil jail is a drastic move meant to humiliate him as a debtor but it is not a means of recovering debts. The Applicant holds that the creditor must show that they have exhausted all other means to recover the debt before opting for imprisonment to civil jail.

Analysis and Determination

6. Having read through the grounds set out in the application and perused the record herein, I find the issue for determination being whether the orders being sought in the application can be granted as prayed?
7. This application is premised on the provision of sections 304, 305 and 306, all of the [Insolvency Act](#) which provide as follows;

Section 304 provides that:-

- (1) An application to the Court for an interim order may be made if the debtor intends to make a proposal to the debtor's creditors under this Division for a composition in satisfaction of the debtor's debts or a scheme of arrangement of the debtor's financial affairs.
- (2) The debtor shall ensure that the proposal provides for a person to act as supervisor of the voluntary arrangement to which the proposal relates.
- (3) Only an authorised insolvency practitioner is eligible to act as supervisor of a voluntary arrangement.
- (4) Subject to subsection (2), such an the application may be made—
 - (a) if the debtor is an undischarged bankrupt-by the



debtor, the bankruptcy trustee of the debtor's estate or the Official Receiver; and

- (b) in any other case-by the debtor.
- (5) An application may be made by a debtor who is an undischarged bankrupt only if the debtor has given notice of the proposal to the Official Receiver and, if there is one, the bankruptcy trustee of the debtor's estate.
- (6) An application may not be made while a bankruptcy application made by the debtor is pending, if the Court has, under section 33, appointed an authorized insolvency practitioner to inquire into the debtor's financial affairs and to report on those affairs to the Court.

Section 305 goes on to provide that:-

- 1) While an application under section 304 for an interim order is pending, the following provisions apply:
 - a) a landlord or other person to whom rent is payable by the debtor may exercise a right of forfeiture in relation to premises let to the debtor for a failure of the debtor to comply with a term of the tenancy—
 - i) only with the approval of the Court; and
 - ii) if in giving approval the Court has imposed conditions-only if those conditions are complied with;
 - b) the Court—
 - i) may prohibit distress from being levied on the debtor's property or its subsequent sale, or both; and
 - ii) may stay any action, execution or other legal process against the property or person of the debtor.
- (2) A court in which proceedings are pending against the debtor may, on proof that an application has been made under section 304 in respect of the debtor, either stay the proceedings or allow them to continue on such terms as it considers appropriate.

Section 306 then provides that:-

- (1) On the hearing of an application made under section 304, the Court may make an interim order if satisfied—
 - (a) that the debtor intends to make a proposal under this Division;



- (b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to make an application for the debtor's own bankruptcy;
- (c) that no previous application has been made by the debtor for an interim order during the twelve months immediately preceding that day; and
- (d) that the supervisor designated under the debtor's proposal is willing to act in relation to the proposal.

8. In the case of *Re: Joyce Wanjiku (Debtor)* [2020]eKLR, where the court was dealing with similar circumstances, it held as follows,

“From the facts I have set out above, I am satisfied that the Applicant is financially distressed. She intends to make a proposal to her creditors for a composition in satisfaction of her debts. Under Section 305(1) (b) of the Act, the court may stay any action, execution or other legal process against the property or person of the debtor.

The powers of the Court are provided for under Section 306 of the Act which states as follows:

306(1) On the hearing of an application made under Section 304, the Court may make an interim order if satisfied—

- (a) that the debtor intends to make a proposal under this Division;
- (b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to make an application for the debtor's own bankruptcy;
- (c) that no previous application has been made by the debtor for an interim order during the twelve months immediately preceding that day; and
- (d) that the supervisor designated under the debtor's proposal is willing to act in relation to the proposal.”

9. In view of the findings in the above cited case, this court finds that the Applicant has satisfied the conditions set out under Section 306 of the Act in that he intends to make a proposal and hence his present Petition to be adjudged bankrupt.

10. In the circumstances, this court finds that the Notice of Motion application dated July 22, 2022 has merits and the same is allowed as follows:-

- a. That the Decree and Warrant of Arrest issued in Nairobi HCC. No.301 of 2014 on May 16, 2022 be and are hereby lifted and set aside.
- b. That there be a Stay of Execution on or any other action or other legal action against Warrant of Arrest issued in the Nairobi HCCC. No.301 of 2014 issued on 16th May, 2022.
- c. That an Official Receiver be appointed as a supervisor of the Debtor's proposed composition/ scheme of arrangement.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 15TH DAY OFFEBRUARY....., 2024.



D. O. CHEPKWONY

JUDGE

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF
MARCH, 2024.**

ALFRED MABEYA

JUDGE

RULING HCCOMMIC NO.E004 OF 2022 - Page 9 of9

