



**In re Philip Nzyoka Mutua (Insolvency Cause E016 of 2023)
[2024] KEHC 5488 (KLR) (Commercial and Tax) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5488 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E016 OF 2023
MN MWANGI, J
MAY 3, 2024
IN THE MATTER OF THE INSOLVENCY ACT, 2015
IN THE MATTER OF PHILIP NZYOKA
MUTUA.....PETITIONER/APPLICANT**

**IN THE MATTER OF
IN THE MATTER OF PHILIP NZYOKA MUTUA PETITIONER**

JUDGMENT

1. Before me is a Bankruptcy Petition dated 12/5/2023 whereby the petitioner prays for bankruptcy orders to be issued against him as he is unable to pay any of his debts.
2. The petitioner supported his petition with an affidavit sworn by himself on 12/5/2023, a declaration of inability to pay sworn on 12/5/2023 and an affidavit of truth of statement in the petition sworn on 12/5/2023.
3. He averred that in the course of running his sand business involving motor vehicle registration number Kxx 6xxH, several accidents occurred caused by the said motor vehicle, and several people were injured as a result.
4. The petitioner further averred that as a consequence of the accidents, several legal suits were instituted against him, that is: CMCC NO. 554/2019 in Machakos, CMCC NO. 9583/2018 at Milimani Law Courts, SMCC NO. E175/2022 at Machakos Small Claims Court and CMCC NO. 605/2020 at Mavoko Law Courts. He stated that CMCC NO. 554/2019 in Machakos was finalized and an award of Kshs.1,415,550.00 was made against him. That warrants of attachment have been issued but Auctioneers have been unable to realize any amount therein as he has no assets that could be attached.



5. The petitioner pleaded that he is completely unable to pay the decretal sum, Auctioneer's and Legal fees and that the said motor vehicle Kxx 6xxH became a wreck and was sold at a price of only Kshs.150,000/-.
6. Further, the petitioner contended that since he sold the said vehicle, which was his only source of income, he resorted to employment as a Security Guard where he earns only Kshs.10,000/- per month.
7. The petition was not opposed despite the fact that it was published in the Standard Newspaper on 4/8/2023 and 31/10/2023. The latter advertisement was annexed to the petitioner's supplementary affidavit sworn by himself on 16/11/2023.

Analysis and Determination.

8. The petitioner filed written submissions dated 20/12/2021 to canvass his petition. This Court has analyzed the petition, its supporting affidavit and the annexures thereto. The issue for determination is if the petition is merited.
9. Section 32 (1) and (2) of the *Insolvency Act* provides as follows-
 - “(1) 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.
 - (2) The Court may decline to deal with such an application if it is not accompanied by a statement of the debtor's financial position containing—
 - (a) such 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.”
10. In the case of *Rajendra Ratilal Sanghani v Schoon Ahmed Noorani* [2018] eKLR, Tuiyott J., (as he then was) held the following-

“When dealing with an Applicant who is not yet adjudged Bankrupt, like the Debtor herein, the Court must be satisfied that the debtor is unable to pay his/her debts. While the Court is not expected to carry out a detailed examination as to the fortunes (perhaps misfortunes) of the debtor, the evidence presented must be such as to make out a prima facie case that the debtor is insolvent and is unable to pay his/her debts. It seems fairly elementary that such an assessment cannot be undertaken unless the debtor gives a true and full inventory of his creditors and debtors and other liabilities and assets.” (emphasis added).
11. In *Re James Maina Kabatha (Debtor/Applicant)* NKR Insolvency Cause No. 4 of 2019 [2020] eKLR, it was held that-

“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 threshold (sic) for individual Petitioners.” (emphasis added).

12. I concur with the findings in the authorities cited above. In this case, the petitioner has given an inventory of his assets and liabilities in his Statement of Affairs annexed to the petition. It indicates that his assets cannot in any way satisfy his liabilities.
13. The record shows that the Court in Machakos CMCC NO. 554 of 2019 delivered a judgment dated 25/8/2021 ordering the petitioner to pay a sum of Kshs.1,415,550.00 to the plaintiffs in that suit. Consequently, a warrant of attachment of moveable property of the petitioner was issued on 1/4/2022. The petitioner has however been unable to settle the decretal amount to date and has also been unable to pay Auctioneer’s fees and Legal fees.
14. From the evidence before me, the petitioner’s only source of income is his employment as a Security Guard where he earns Kshs.10,000/= per month as evidenced in the letter marked as “PNM 9” annexed to his supporting affidavit.
15. As stated in *Re James Maina* (*supra*), an individual seeking bankruptcy protection is required to demonstrate that he is acting in good faith and to disclose all his financial information. In this case, and without any evidence to controvert the petitioner’s assertions, I find that the petitioner has made a full disclosure of his assets and liabilities.
16. On the basis of the evidence before me, I find that there is sufficient evidence that the petitioner is unable to pay his debts. Under Section 32 of the *Insolvency Act*, 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.
17. In the result, this Court makes the following orders:
 - i. That the petitioner, Philip Nzyoka Mutua be and is hereby adjudged bankrupt and a bankruptcy order is made against him;
 - 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 assets;
 - iii. That execution of the decree in Machakos CMCC NO. 554/2019 is hereby stayed.
 - iv. That I order stay of proceedings in CMCC NO. 9583/2018 at Milimani Law Courts, SMCC NO. E175/2022 at Machakos Small Claims Court and CMCC NO. 605/2020 at Mavoko Law Courts; and
 - v. There shall be no order as to costs.



It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 3RD DAY OF MAY, 2024.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

Mrs. Nzau for the petitioner

No appearance for the respondents

Ms B. Wokabi – Court Assistant.

