



**Mwangi v Synergy Industrial Credit Ltd (Insolvency Cause
E001 of 2022) [2024] KEHC 7545 (KLR) (17 May 2024) (Directions)**

Neutral citation: [2024] KEHC 7545 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
INSOLVENCY CAUSE E001 OF 2022
DO CHEPKWONY, J
MAY 17, 2024**

BETWEEN

NANCY NJOKI MWANGI DEBTOR

AND

SYNERGY INDUSTRIAL CREDIT LTD CREDITOR

DIRECTIONS

1. Nancy Njoki Mwangi vide a Debtor's Petition dated 26th April, 2022, has sought for a bankruptcy order to issue and to be adjudged bankrupt in respect of her Estate on the ground that she is unable to pay her debts and more so the decretal sum arising out of the case of Thika Magistrate's Court Case No.279 of 2020, Gilbert Maina Muhia –vs- Zablon Mwangi Muthaiga and Milimani Commercial Chief Magistrate's Court, Civil Case No.9208 of 2017, synergy Industrial Credit Limited –vs- Target Promotions Limited & 2 Others. The Petition as deponed in her Supporting Affidavit sworn on 26th April, 2022.
2. In her Statement of Affairs (Form 11) dated 20th April, 2022, the Debtor/Applicant indicates that her only Creditor is Synergy Industrial Credit Limited, the Creditor/Respondent herein, whose debt is unsecured and amounts to Kshs.4,193,988.00 emanating from a Decree in Milimani Commercial Chief Magistrate's Court, Civil Case No.9208 of 2017, Synergy Industrial Credit Limited –vs- Target Promotions Limited & 2 Others.
3. The Debtor also filed Notice of Motion application dated 19th May, 2022 seeking among other orders, an interim stay of execution of Warrants of Arrest for her committal to civil jail on execution of a Decree arising from Milimani CMCC No.9208 of 2017.
4. The application was opposed by the Creditor/Respondent, Synergy Industrial Credit Limited through Grounds of Opposition dated 29th July, 2022 and a Replying Affidavit sworn by the Legal Officer of the Respondent, Jacob Mbae Meeme on 29th July, 2022.



5. The application was canvassed by way of written submissions which were filed by the parties and the court subsequently delivered a ruling on 30th March, 2023 and allowed the application dated 19th May, 2022.
6. When the matter was placed before the court on 13th June, 2023, it directed the Petitioner to gazette the Petition which was also not done as confirmed when it came up for mention on 25th July, 2023. The Creditor then filed a Notice of Preliminary Objection dated 24th October, 2023 on the following grounds:-
 - a. The Debtor's Petition dated 26th April, 2022 as filed herein is fatally defective, bad in law and the same does not lie.
 - b. The Debtor/Petitioner fails to comply with the *Insolvency Act* No.18 of 2015 particularly the mandatory provisions of Section 32(4) of the *Insolvency Act*, 2015 as read together with Regulation 18(3) and (4) of *Insolvency Regulations*, 2016.
 - c. The Debtor/Petitioner is guilty of material non-disclosure of crucial facts regarding the instant Debtor's Petition and has not come to this Honourable Court with clean hands therefore making this Petition frivolous, vexatious and abuse of the court process.
 - d. This Honourable Court lacks jurisdiction to hear and determine this matter as the instant Debtor's Petition offends the mandatory provisions of the law.
7. On 30th April, 2024, Mr. Maina Kiene, counsel for the Petitioner informed the court that the Petitioner had already complied with the provisions of Section 32 of the *Insolvency Act* on gazette and therefore the Notice of Preliminary Objection had been overtaken by events.
8. The Creditors' counsel, Mr. Meeme stated that the matter was coming up for directions on the Notice of Preliminary Objection dated 24th October, 2023 on which there was no response filed for the court to make a determination and sought for a ruling date to issue on the same.
9. In rejoinder, the Debtor's counsel stated that there is no provision in law that dictates how communication on gazette should be done to court. He stated that he wrote a letter dated 5th February, 2024 in respect of the notice dated 9th January, 2024 which was gazetted on 2nd February, 2024 in line with the directions of the court as issued on 2nd February, 2024. He stated that there was nothing to respond to in the Notice of Preliminary Objection and hence sought for a hearing date for the Petition.
10. Upon listening to both counsel for the parties herein, the court finds that there is need to issue directions and provide a way forward for the parties in this matter. The gist of the Notice of Preliminary Objection is on non-compliance of the law with respect to gazette of the Debtor's Petition. There is evidence that the said Petition was duly gazetted in the Star Newspaper which confirms compliance with Section 32(4) of the *Insolvency Act*.
11. In the circumstances, the Court finds that there is no need of addressing the merits of the Notice of Preliminary Objection since the same has been overtaken by events. The parties to take directions on hearing of the Petition.

It is so ordered.

DIRECTIONS DELIVERED, DATED AND SIGNED AT KIAMBU THIS ...17TH DAY OF MAY....., 2024.

D. O. CHEPKWONY



JUDGE

