



REPUBLIC OF KENYA



**In re Katherine Silva Gow Monthy (Insolvency Cause E015 of 2023)
[2024] KEHC 11007 (KLR) (Commercial and Tax) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11007 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E015 OF 2023
FG MUGAMBI, J
SEPTEMBER 20, 2024**

IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF

2015

AND

IN THE MATTER OF THE INSOLVENCY REGULATIONS,

2016

AND

RULING

1. By an application dated 29/6/2023 (the first application), the applicant (Katherine) seeks a stay of proceedings and stay of execution of the decree issued by the Chief Magistrate's court on 27/1/2023 in NGONG MCELC NO. E040 of 2021 (E040 OF 2021). She also seeks leave to publish the bankruptcy petition filed herein in a newspaper with a nationwide circulation. The application has been brought under sections 32 and 33 of the *Insolvency Act*.
2. The trial court in that matter had directed Katherine to pay the respondent (Siamata) through his Advocate half of the decretal amount within fourteen days and the balance to be paid to an interest earning account within thirty days from the date of the order in default of which Siamata Ole Olododmirik Silonka (Siamata) may proceed with execution.
3. This is the ruling that Katherine seeks to stay. Her case is that the trial court failed to take account of her insolvent circumstances, evidenced by the bankruptcy petition filed in this court on 18/5/2023.
4. Katherine's application is further premised on the acknowledged debts due to Siamata of Kshs. 15,290,849/=, from a judgment issued in E040 of 2021. A further debt of Kshs. 7,149,093.30 as at 24/4/2023 is owed to SBM Bank (Formerly Chase Bank Limited).



5. This application is opposed through the replying affidavit sworn by Siamata on 15/9/2023, which expresses similar grounds to those in the 2nd application.
6. Following the application by Katherine this court granted interim orders of stay and directed that the petitioner's bankruptcy petition be published in a newspaper of nationwide circulation within 21 days. It is these orders that triggered the second application dated 4/7/2023 filed by the respondent.

The application of 4/7/2023

7. By this application Siamata seeks to have the interim orders issued by this court on 1/7/2023 set aside on the grounds that Katherine had previously sought similar orders in a court of concurrent jurisdiction, which orders were declined. Siamata further argues that Katherine failed to disclose to this court that she is employed as a Manager at Equity Bank where she earns a salary of Kshs. 334,599/= per month.
8. Katherine opposes this application through her replying affidavit sworn on 18/7/2023. She denies not having fully disclosed her affairs to the court. She confirms that she filed a full statement of her affairs in the first application and that she had received a Certificate of Compliance from the Official Receiver. She argues that the appeal arising from the lower court matter is a different subject matter from the insolvency proceedings currently before this court.
9. In response to the averment that the application had been declined by a court of equal jurisdiction, again Katherine denies this, arguing that the application, dated 20/2/2023 was withdrawn before it was even prosecuted.
10. She further insists that she is genuinely unable to pay her debts and that the application for stay of execution and stay of proceedings should be allowed pending the determination of her bankruptcy petition.

Analysis and determination

11. I shall deal with the applications simultaneously since they raise similar issues. The sole issue for determination is whether Katherine is deserving of the orders for stay in E040 in light of the impending bankruptcy petition.
12. A determination of this issue ought to be understood within the objectives of bankruptcy which are set out in section 3 of the [Insolvency Act](#), 2015. Amongst the key objectives is to provide for an efficient and equitable administration of the estates of insolvent natural persons while balancing between the interests of those persons and those of their creditors.
13. Under section 32 of the [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. Section 23 of the [Act](#) provides as follows:
 - “(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 process on such terms as it considers appropriate; or



(b) permit the execution process to continue on such terms as it considers appropriate.”

14. While I am cognizant that this section implies that such procedure is available to creditor’s petitions, the *Act* contains no similar provision under debtor’s petition. In my view an application for stay of execution serves similar objectives whether it is filed by creditors or the debtor, so that the essence of the stay orders would be to preserve the assets and ensure a fair distribution of the estate should a bankruptcy order be made against the debtor.
15. I say this noting the observation of this court (Chacha Mwita, J), In *re Jai Prakash*, [2022] KEHC 11075 (KLR). In allowing a similar application as the present one the court observed as follows:

“I have perused the provisions in Division 3 of the Act where the applicant falls. I have not seen a provision the equivalent of sections 22 and 23. In the circumstances, this court retains inherent powers to issue orders that are necessary and intended to meet the ends of justice.”
16. Having perused the pleadings and evidence filed by the parties it is not in dispute that Katherine has filed a Debtor’s petition herein. It is also not in dispute that there is eminent execution from a judgment and decree issued in E040 of 2021. In order to support her application, Katherine also attached a statement of account, correspondence from SBM Bank relating to monies due to the bank, a CRB listing report as proclamation of her items as evidence of her insolvent status.
17. What is required of the court at this point time is not to determine the insolvency petition but to satisfy itself that an applicant is deserving of a stay of execution so as to allow for the petition to be heard.
18. I am satisfied on a balance of probabilities that the pending petition would be rendered irrelevant if the orders sought were not granted, which would undermine the bankruptcy process.

Disposition

19. Accordingly, and in light of the directions of this court to determine the debtor’s petition alongside the applications, it is my finding that the applications are both moot even though for finality sake, I would have allowed the application dated 29/6/2023 and dismissed the application of 4/7/2023 is dismissed. There shall therefore be no orders as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 20TH DAY OF SEPTEMBER 2024.

F. MUGAMBI

JUDGE

