



REPUBLIC OF KENYA



KENYA LAW
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**In re Katherine Silva Gow Monthy (Insolvency Cause E015 of 2023)
[2024] KEHC 11074 (KLR) (Commercial and Tax) (20 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11074 (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

IN THE MATTER OF KATHERINE SILVA GOW MONTHY

JUDGMENT

1. Before the court is a debtor's petition dated 8/5/2023. The petition is based on acknowledged debts owed to Siamata Ole Olododmirik Silonka (the respondent) amounting to Kshs. 15,290,849/=, as per a judgment delivered in CMELC No.040 of 2021 (the lower court judgment). Additionally, the petitioner claims a further debt of Kshs. 7,149,093.30 is owed to SBM Bank (formerly Chase Bank Limited) as of 24/4/2023.
2. The petitioner avers that she is unable to pay her debts and prays for an order of bankruptcy on her estate.
3. The petition is opposed by the sole respondent, through a replying affidavit sworn on 29/4/2024. The respondent argues that the petitioner does not meet the criteria for bankruptcy, highlighting that no evidence has been provided to substantiate the alleged debt owed to SBM Bank or to demonstrate that the bank has initiated execution proceedings against the petitioner. The respondent also disputes the accuracy of the petitioner's CRB listing.
4. Further, the respondent contends that, given the petitioner's monthly salary of Kshs. 334,000/=, she should be capable of repaying her debt in installments or securing a loan to settle the amount owed to the respondent. The respondent specifically questions the petitioner's expenditure and financial



management, particularly the high school fees. In the respondent's view, considering the petitioner's alleged financial difficulties, she should consider enrolling her children in more affordable schools to prioritize her debt obligations.

5. The respondent emphasizes that bankruptcy proceedings should not be used as a means to evade a legitimate debt.

Analysis and determination

6. I have carefully analyzed the pleadings, submissions, evidence and case law cited by both parties. The sole issue for determination is whether the petition should be allowed.
7. The petitioner does not deny that she is a banker earning a salary of Kshs.334,599/= net. She has in fact attached her pay slip and an expenditure schedule. My overall analysis of the evidence is that although debtor has a steady and significant source of income, her necessary household expenses significantly reduce the disposable amount available for repaying the decretal sum. This leaves her with only a minimal capacity to meet her financial obligations.
8. Moreover, the respondent's concern regarding exorbitant school fees is unfounded, as the debtor has submitted evidence of a scholarship covering these costs, which further reduces any financial burden in that regard.
9. I also observe that the petitioner has not provided recent documentation regarding the debt owed to SBM Bank. The last communication on record is an email dated 30/6/2021, while the current petition was filed in 2023 - leaving a two-year gap without updated evidence of this particular debt. Nonetheless, the petitioner has submitted a Credit Reference Bureau (CRB) report dated 6/6/2024, attached to her Further Affidavit of the same date.
10. This report paints a picture of the petitioner's current financial status and supports her claim of being significantly indebted. The report confirms that the petitioner has a non-performing loan account with a substantial outstanding balance of Kshs. 6,400,057.65.
11. Given her liabilities, expenses and monthly income, it is doubtful that the petitioner has the potential to enter into a sustainable structured repayment plan, proposal to pay in installments or arrange a loan facility given her credit rating which is contained at page 17 of the CRB report. Thus, the alternative options like a scheme of arrangement, though beneficial, may not work in this case.
12. The respondent's argument that the petitioner can manage her debts through reducing unnecessary expenditures, is equally compelling. Even then however, the amount that would be available to pay the debt would still be quite insignificant comparing it to the decretal amount which continues to earn interest.
13. This court has consistently held that bankruptcy is intended as a remedy for individuals who are genuinely unable to meet their financial obligations, providing them a fresh start while ensuring that creditors receive as much as possible from the debtor's remaining assets.
14. The petitioner referred this court to the decision *In re James Maina Kabatha (Debtor/Applicant)*, [2020] eKLR as well as the decision *In the matter of Ali Jillo Fallan*, [2021] KEHC 8 (eKLR). All these decisions are in alignment to this preposition.
15. I must emphasize that bankruptcy is not is a free pass to evade one's financial obligations. When a bankruptcy order is issued, the bankrupt's assets are vested in the trustee, who is tasked with seizing, administering and distributing these assets to satisfy the bankrupts debts.



16. In this case, the petitioner has demonstrated a clear inability to repay her debts. Therefore, she warrants the protection afforded by a bankruptcy order, which will ensure the orderly administration and fair distribution of her remaining assets among her creditors.

Disposition

17. Accordingly, the petition is allowed. A Bankruptcy Order is hereby made in respect of the petitioner. The Official Receiver is appointed as Trustee in Bankruptcy and shall be immediately served with this order.

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

F. MUGAMBI

JUDGE

