



**In re Bryan Mbugua Kariuki (Insolvency Cause E016 of 2024)  
[2024] KEHC 15721 (KLR) (Commercial and Tax) (13 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15721 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY CAUSE E016 OF 2024  
BM MUSYOKI, J  
DECEMBER 13, 2024  
IN THE MATTER OF INSOLVENCY ACT, 2015**

**JUDGMENT**

1. By a petition dated 11<sup>th</sup> July 2024, the applicant herein asks this court to make to issue a bankruptcy order in respect of his estate for reasons that he is unable to pay his debts. The petitioner is accompanied by the petitioner's statement of affairs which shows that he is worth Kshs 37,000.000 while he has accumulated liabilities of Kshs 54,591,463.00. The petition herein was advertised in the Daily Nation newspaper of 12-08-2024.
2. The petitioner has also filed a supporting affidavit dated 11-07-2024 which enumerates the petitioner's liabilities owed to different institutions and individuals. It is deponed that the petitioner's company known as Sadiki Growers Limited obtained a loan of Kshs 3,000,000.00 from an unregulated microfinance entity known as Discount Capital Limited which grew to Kshs 20,000,000.00 due to exorbitant interest rates. The company was unable to pay the loan following which the said Discount Capital Limited served a statutory demand and later commenced insolvency proceedings against the company vide this court's insolvency cause number E008 of 2022.
3. The petitioner also claims that during liquidation of the company, another loan of Kshs 48,500,000.00 owed to the Cooperative Bank of Kenya became due and encumbrances to that effect was registered with the Business Registration Services. The notice, the petition and gazette notice for the petition have been exhibited as annexures 1, 2 and 3 while CR12 form for the company has been attached as annexure 14 of the petitioner's aforesaid supporting affidavit.
4. The said Discount Capital Limited also went on to sue the petitioner, his co-director one Salome Wamaitha Githinji and his other company Zuka Group Limited in respect of the same loan in milimani small claim court case number E883 of 2021 from which it obtained a decree for Kshs 1,104,500.00. In execution of this decree, the petitioner's goods were attached and later, a notice to show cause for committal to civil jail against him was pursued.



5. The petitioner has deponed further that he has also been sued by another lending company known as Juhudi Kilimo Limited in Kajiado CMCC number E374 of 2022 in which a decree for Kshs 3,091,288.00 has been passed against him and while executing the said decree, Betabase Auctioneers demanded their costs of Kshs 533,589.42.
6. The petitioner has added that he used to own motor vehicle registration number KBQ 640C which he sold in 2020 but the buyer never effected transfer of the same to himself. The vehicle was involved in an accident as a result of which the petitioner was sued by one Fatma Ndungu Muiruri in milimani small claims court case number E2530 of 2022 where a decree for a sum of Kshs 187,010.00 was passed against him.
7. The petitioner has also exhibited a court judgement and ruling which he says are against him in Thika CMCC number 506 of 2018 for Kshs 751,617.00 where he was a third party and a ruling in Kithimani pmcc number 262 of 2018 where there is a decree against him for Kshs 203,700.00.
8. According to the above, the petitioner's liabilities can be summarised are as follows;
  - a. Kshs 3,091,288.00 owed by Sadiki Growers Limited to Juhudi Kilimo Limited.
  - b. Kshs 533,589.42 owed to Betabase Auctioneers by Sadiki Growers Limited.
  - c. Kshs 1,324,259.00 owed to Discount Capital Limited by Zuka Group Limited, Salome Wamaitha Githinji, Sadiki Growers Limited and the petitioner vide small claims court case number E883 of 2021.
  - d. Kshs 187,010.00 owed to Fatma Ndungu Muiruri by the petitioner vide milimani small claims court case number E2530 of 2022.
  - e. Kshsh 751,617.00 owed by the petitioner to Patricia Mwikali Kingangi *vide* Thika Cmcc number 506 of 2018.
  - f. Kshs 203,700.0 owed to Eilson Kahama and Rose Mutheu Wambua vide Kithimani Pmcc number 262 of 2018.
  - g. Kshs 48,500,000.00 owed to the Cooperative Bank by Sadiki Growers Limited.
9. It appears to me that debts numbers a, c and g are owed by limited liability companies one of which is said to be in liquidation. The third debt is owed by the petitioner, his co-directors and the aforesaid limited liability companies. Liquidation of a limited liability company does not translate to inability of the directors or shareholders to pay their debts. The two entities are in law different and distinct.
10. The petitioner alleges that his liquid worth is now Kshs 37,000.00 which I cannot ascertain at this stage. Bankruptcy proceedings are meant to give a lease of life to debtors who for some reasons, commercial or otherwise find themselves in a position not able to settle their debts. In *Re Johnson Mwendwa Muthengi (Debtor/Applicant)* (2022) KEHC 15657 (KLR) it was held that;

It ought to be remembered that bankruptcy orders are aimed to give a distressed debtor a second chance where it is shown that the application is made in good faith and that the applicant is factually and commercially insolvent. In short, the debtor has the onus to show that his liabilities exceed his assets, and he/she is unable to pay his debts as and when they fall due for payment.'
11. It appears that the petitioner's assets are far below his liabilities and I believe that a case has been made for a bankruptcy order. I am alive to the fact that some debtors may abuse insolvency or bankruptcy



proceedings in order to avoid payments of debts but it is the duty of the official receiver and not this court to establish that unless the court has been given good reasons to deny a bankruptcy order. This cause has been advertised and there has been no documents filed by the disclosed debtors or any other interested person to paint a different picture from what the petitioner has presented. The official receiver has also issued a certificate of compliance.

12. In view of the above position, I am inclined to hold in favour of the petitioner and I consequently make a bankruptcy order against the debtor Bryan Mbugua Kariuki. The official receiver shall be the Bankruptcy Trustee in respect of the debtor's property.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF DECEMBER 2024.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgement delivered in presence of Mr. Onsembe for the applicant.

