



REPUBLIC OF KENYA



**In re Salome Wamaitha Githinji (Insolvency Cause E017 of 2024)
[2024] KEHC 15708 (KLR) (Commercial and Tax) (13 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15708 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E017 OF 2024
BM MUSYOKI, J
DECEMBER 13, 2024
IN THE MATTER OF INSOLVENCY ACT, 2015
INSOLVENCY CAUSE NUMBER E017 OF 2024
RE: SALOME WAMAITHA GITHINJI**

JUDGMENT

1. The applicant has moved this court by a petition dated 11th July 2024, seeking orders that this court issues a bankruptcy order in respect of her estate. The ground for the petition is that the petitioner is unable to pay her debts. The petitioner has simultaneous with the petition filed statement of affairs of her estate according to which she is worth Kshs 21,000,000 while her accumulated liabilities are Kshs 50,779,576.00. The petition herein was advertised in the Daily Nation newspaper of 14-08-2024.
2. The petition is also supported by the applicant's supporting affidavit dated 11-07-2024. The said affidavit shows the petitioner's liabilities owed to different institutions and individuals. She deposes that a company known as Sadiki Growers Limited in which she is a shareholder obtained a loan from an unregulated microfinance entity known as Discount Capital Limited of Kshs 3,000,000.00 which grew to Kshs 20,000,000.00 inclusive of interest and penalties. Due to the company's inability to pay the loan, the said Discount Capital Limited served a statutory demand on it and later filed insolvency proceedings against the vide this court's insolvency cause number E008 of 2022.
3. The petitioner has added that Discount Capital Limited also sued her, her co-director one Bryan Mbugua Kariuki and their other company Zuka Group Limited in respect of the same loan in milimani small claim court case number E883 of 2021 and obtained a decree for Kshs 1,104,500.00. An auctioneer instructed by Discount Capital Limited executed the decree by attaching the petitioner's goods on 13-06-2022. In addition to this attachment, a notice to show cause for committal to civil jail in the same suit was taken out against the petitioner and her co-director on 7th March 2024. The notice to show cause was for Kshs 1,324,254.00.



4. The petitioner has added that there are two other creditors vide court judgements in Thika Cmcc number 506 of 2018 and Kithimani Pmcc number 262 of 2018. However, the judgements she has attached as evidence of these two debts do not bear her name as a debtor. The same are against Zuka Group Limited, CMC Motors Limited and Bryan Mbugua Kariuki in the Thika case and Bryan Kariuki Mbugua, Equity Bank (K) Limited and Vintage Auctioneers in Kithimani case.
5. According to the above and the filed statement of affairs, the petitioner's liabilities can be summarised are as follows;
 - a. Kshs 1,324,259.00 owed to Discount Capital Limited by Zuka Group Limited, Bryan Mbugua Kariuki, Sadiki Growers Limited and the petitioner vide small claims case number E883 of 2021.
 - b. Kshs 48,500,000.00 owed to the Cooperative Bank of Kenya which appears in the statement of affairs but not explained in the supporting affidavit or by production of any document.
 - c. Kshs 751,617.00 owed by Zuka Group of Limited, CMC Motors Limited and Bryan Mbugua Kariuki to Patricia Mwikali Kingangi vide Thika Cmcc number 506 of 2018.
 - d. Kshs 203,700.0 owed to Eilson Kahama and Rose Mutheu Wambua vide Kithimani Pmcc number 262 of 2018 by Bryan Kariuki Mbugua, Equity Bank (K) Limited and Vintage Auctioneers.
6. It is clear that the debt in 'd' above does not involve the petitioner in this cause. There is also no proof or clarity of the debt allegedly owed to the Cooperative Bank of Kenya Limited. The petitioner alleges that her liquid worth is now Kshs 21,000.00 which this court cannot ascertain at this stage. Bankruptcy proceedings are a tool of giving a debtor a lease of life and opportunity to reorganize their distressed financial affairs. *In Re Johnson Mwendwa Muthengi* (Debtor/Applicant) (2022) KEHC 15657 (KLR) the court 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."
7. Although evidence in proof of some considerable amount of the alleged debts has not been produced, it is apparent that the petitioner's assets are way below her liabilities and in my view a case for a bankruptcy order has been made. Whereas some unscrupulous debtors may abuse bankruptcy or insolvency proceedings in order to avoid payments of just debts, the official receiver always has an opportunity to establish the status of the estate of the debtor. This cause has been advertised and no documents have filed by the disclosed creditors or any other interested person to show a different picture from what the petitioner has presented. The official receiver has also issued a certificate of compliance dated 12th July 2024.
8. I am in the circumstances, inclined to find in favour of the petitioner and consequently I make a bankruptcy order against the debtor Salome Wamaita Githinji. The official receiver shall be the Bankruptcy Trustee in respect of the debtor's property.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF DECEMBER 2024.

B.M. MUSYOKI



JUDGE OF THE HIGH COURT

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

