



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

IN THE MATTER OF INSOLVENCY ACT NO. 18 OF 2015

INSOLVENCY CAUSE NO. E001 OF 2020

BENJAMIN MIDIWO ORWA.....DEBTOR

JUDGMENT

On 1st December 2020 **BENJAMIN MUDIMO ORWA** lodged a Debtor's Petition in Court, asking that a Bankruptcy Order be made in respect of his estate.

1. The basis of his said petition was that he was unable to pay his debts.
2. In his supporting affidavit the Petitioner explained that whereas the estimated net realizable value of his assets was Kshs 220,000/=, his liabilities were in excess of Kshs 15,000,000/=.
3. His financial difficulties can be traced to the time when the Petitioner borrowed Kshs 2,660,000/= from the **ECO BANK KENYA LIMITED**. The loan was used to purchase a lorry Registration **KBL 150E**.
4. The lorry was used by the Petitioner for commercial transport. However, the lorry was involved in an accident and had to stay at a garage for a considerable period, for purposes of repairs.
5. Whilst the lorry was off the road, the Petitioner was unable to remit payment of the monthly instalments of Kshs 93,900/= each. Therefore, he fell into arrears.
6. After the lorry was repaired it was repossessed by **ECO BANK KENYA LIMITED**.
7. Notwithstanding the sale of the lorry, the bank was still owed a considerable amount of money. Therefore, the bank sued the Petitioner to recover the outstanding balance.
8. The Chief Magistrate's Court at Kisumu granted judgment in favour of the bank in **CMCC NO. 410 OF 2014**. The Decree in favour of the bank was for Kshs 2,880,082.83 with interest thereon at 5% per annum from 28th April 2014; plus a further sum of Kshs 119,054/= with interest at court rates from 30th June 2014.
9. After the Petition was filed, the bank raised grounds of objection to it. The bank was of the view that the petition was simply a ploy by the Petitioner, to try and avoid settling the decree.
10. An Investigator who was engaged by the bank carried out private investigations and filed a report indicating that the Petitioner was a man of considerable means.
11. It is because of the said Investigation Report that the bank was convinced that the Petitioner was simply trying to evade his obligation to settle the decretal amount.
12. However, after the Petitioner filed a Supplementary Affidavit, poking holes into the Investigation Report, the bank appears to have been convinced that the Petitioner definitely lacked the means which he could use to settle the decretal amount.
13. Furthermore, the Petitioner had also retired from his job at the Ministry of Public Service and Administration, Kakamega County.
14. In the face of the further evidence which was provided by the Petitioner, the bank's advocate told the Court to exercise its discretion in

the matter.

15. I have given due consideration to all the evidence before me, and I am satisfied that the Petitioner is unable to pay his debts.

16. And because the Petitioner's debts exceed his assets by a sum in excess of Kshs 15.0 Million, I now grant the reliefs sought in the Petition.

17. A bankruptcy order shall issue forthwith against the estate of the Petitioner.

18. And the Official Receiver is hereby appointed as the Bankruptcy Trustee in respect of the Debtor's Property.

19. Costs of the Petition shall be borne out of the Debtor's property.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 10TH DAY OF NOVEMBER, 2021

FRED A. OCHIENG

JUDGE