



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL AND ADMIRALTY DIVISION
INSOLVENCY CAUSE NO E006 OF 2019

IN THE MATTER OF JAMES MUTUKU MUSAU....PETITIONER/DEBTOR

AND

IN THE MATTER OF.....REPUBLIC

RULING

1. The petitioner herein, **James Mutuku Musau**, filed this Insolvency Petition on 23rd May 2019 seeking the following orders:-

- 1. That an order that bankruptcy order be issued.***
- 2. That the official receiver be appointed as bankruptcy trustee.***

2. The petition is supported by the petitioner's affidavit sworn on 26th March 2019. When the petition came up for hearing on 12th March 2020, counsel for the petitioner urged the court to exercise its discretion under Section 33(2) of the Insolvency Act and appoint an insolvency practitioner to prepare and file a report on the Debtor's financial affairs. Counsel further sought orders for stay of execution and proceedings.

3. Section 32 (2) of the Insolvency Act(hereinafter "the Act") stipulates as follows:

(2) The Court may decline to deal with such an application if it is not accompanied by a statement of the debtor's financial position containing—(a)such particulars of the debtor's creditors and of the debtor's debts and other liabilities and assets as may be prescribed by the insolvency regulations; and

(b) such other information as may be so prescribed.

4. Section 33 of the Act on the other hand, stipulates as follows:

Appointment of insolvency practitioner by the Court

(1) Subject to section 34, on the hearing of a debtor's application, the Court may not make a bankruptcy order if it appears to the Court—

(a) that if a bankruptcy order were made the total amount of the applicant's debts, so far as unsecured, would be less than the small bankruptcies level;

(b) that if a bankruptcy order were made, the value of the bankrupt's estate would be equal to or more than the prescribed minimum value;

(c) that, during the five years immediately preceding the debtor's application, the debtor has—

(i) neither been adjudged bankrupt; nor

(ii) made a composition with the debtor's creditors in satisfaction of the debtor's debts or a scheme of arrangement of the debtor's financial affairs; and

(d) that it would be appropriate to appoint an authorised insolvency practitioner to prepare a report under section 34.

(2) If, on the hearing of the application, it appears to the Court that it would be appropriate to make an appointment as referred to in subsection (1)(d), the Court shall appoint an authorised insolvency practitioner in relation to the debtor—

(a) to prepare a report under section 34; or

(b) subject to Division 1 of Part IV, to act in relation to any voluntary arrangement to which the report relates as supervisor for the purpose of supervising its implementation

(3) In this section—

(a) “prescribed minimum value” means the amount for the time being specified in the insolvency regulations for the purposes of this section;

(b) “small bankruptcies level” means the amount for the time being so specified for the purposes of this section.

5. In the present case, I am satisfied that the petitioner has made out a case for the appointment of an insolvency practitioner to make a report on his financial affairs.

6. The petitioner has demonstrated that he advertised the petition in a newspaper of national circulation as shown in the annexure attached to the further affidavit dated 9th March 2020.

7. Consequently, I allow the petitioners application and order that there shall be a stay of all proceedings and execution against the petitioner herein and the petitioner shall seek the services of a Licensed Insolvency Practitioner to prepare and file a report on his financial affairs in court.

Dated, signed and delivered via Microsoft Teams at Nairobi this 21st day of May 2020 in view of the declaration of measures restricting court operations due to Coved -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the presence of:

No appearance for the parties.

C/A & DR – Hon. Wanyama