



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

INSOLVENCY CAUSE NO. E014 OF 2020

CORAM: D. S. MAJANJA J.

IN THE MATTER OF THE INSOLVENCY ACT, 2015

AND

IN THE MATTER OF JOYCE WANJIKU (A DEBTOR)

RULING

1. The applicant has filed the Notice of Motion dated 24th August 2020 under **sections 304, 305 and 306** of the **Insolvency Act, 2016** (“the Act”) seeking the following orders: -

[1] THAT this Honourable Court do make an Interim Order allowing the Debtor, JOYCE WANJIKU to make a Scheme of Arrangement to pay creditors pursuant to Section 304(1) of the Insolvency Act, 2015.

[2] THAT this Honourable Court do grant stay of any action, execution or other legal process against the property and person of the debtor pending the approval of the debtor’s proposed composition/scheme of arrangement.

[3] THAT this Honourable Court do grant stay of any action, execution or other legal process against the property and person of the debtor pending determination of these proceedings.

[4] THAT the Official Receiver be appointed as Supervisor of the debtor’s proposed composition/scheme of arrangement.

[5] THAT the costs of this application be provided for.

2. The application is grounded on the affidavit of Joyce Wanjiku sworn on 24th August 2020. She states that she owes a cumulative debt of **Kshs. 9,582,973.57/-** being the balance for loans advanced to her as asset financing. She states that she has been running her business of selling sand for construction as part of that business, she acquired several trucks through asset financing from three lending institutions as follows:

(a) Motor vehicle KBZ 484L FVZ Isuzu Truck for Kshs. 8,272,000/- from I & M Bank Limited with a current outstanding debt of about Kshs. 5,100,000/-.

(b) Asset financing of Kshs. 5,123,394.35 for purchase of motor vehicle KBA 859P from NIC Bank with a current outstanding debt is Kshs. 3,048,841.30/-.

(c) Asset financing for purchase of motor vehicle KBZ 833Z from CFC Stanbic Bank with a current outstanding debt is Kshs. 1,433,952.27/-

3. Ms Wanjiku explained that due to family tragedy in 2017 and the volatile business environment she failed to service the loan facilities which fell into arrears causing the creditors to issue demand notices for the outstanding amounts. Motor vehicle registration number KBZ 484L FVZ Isuzu Truck was repossessed and sold by I & M Bank Ltd at Kshs. 2,100,000/- leaving Kshs. 5,100,000/- which the bank has now demanded. She further states that she is unable to pay the outstanding debts as demanded as her operations have scaled down due to the loss of one motor vehicle and the current Covid-19 pandemic which has adversely affected the business.

4. Ms Wanjiku deponed that she now requires assistance of the Court to reorganize her business and would like to make a proposal to the

Creditors for purposes of restructuring the loan agreement and to enable her continue with the business in order to settle the debts.

5. This application is made under **Part IV** of the **Act** titled, “*Alternatives to Bankruptcy; Natural Persons*” which allows a debtor to enter into voluntary arrangements with its creditors in lieu of the applying for bankruptcy. Under **section 304** of the **Act**, a debtor may make an application for a composition in satisfaction of the debtor’s case or a scheme of arrangement of the debtor’s financial affairs.

6. From the facts I have set out above, I am satisfied that the applicant is financially distressed. She intends to make a proposal to her creditors for a composition in satisfaction of her debts. Under **section 305(1) (b)** of the **Act**, the court may stay any action, execution or other legal process against the property or person of the debtor.

7. The powers of the Court are provided for under **section 306** of the **Act** which states as follows:

306(1) On the hearing of an application made under section 304, the Court may make an interim order if satisfied—

(a) that the debtor intends to make a proposal under this Division;

(b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to make an application for the debtor's own bankruptcy;

(c) that no previous application has been made by the debtor for an interim order during the twelve months immediately preceding that day; and

(d) that the supervisor designated under the debtor's proposal is willing to act in relation to the proposal.

8. From the facts I have set out above, the applicant has established the conditions set in the foregoing provisions. Consequently, I allow the Notice of Motion dated 24th August 2020 as prayed save that the Applicant shall nominate an authorised Insolvency Practitioner to act as supervisor of the voluntary arrangement as required by **section 304(3)** of the **Act**.

DATED and **DELIVERED** at **NAIROBI** this **9TH** day of **OCTOBER** 2020.

D. S. MAJANJA

JUDGE

Court Assistant: Mr. M. Onyango.

Mr Kibera instructed Kibera and Associates Advocates for the Applicant.