



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
BANKRUPTCY CAUSE NO. 4 OF 2015
IN THE MATTER OF: PAUL KIMURI KIRIMI

R U L I N G

1. The Application is dated 29th January 2015.
2. It first came before me on Friday 30th January 2015 under a Certificate of Urgency and re-listed on Monday to enable counsel to argue Application.

Unfortunately counsel did not attend Court and Mr. Masika stepped in to hold brief. I am informed Mr. Kabuye had a slight accident.
3. The background is that the applicant has accumulated debts in the sum of Kshs. 3,103,461/40 according to his petition. There are two principal debtors Standard Chartered Bank and Child maintenance debts to his ex-wife for child maintenance orders given in the family court. The child maintenance order does not seem to have been varied after he lost his job.
4. The Applicant has spent nearly 2 months in prison. He accepts his debts and his liability to pay them. He even makes proposals to repay when he regains employment.
5. The Applicant has petitioned for his own Bankruptcy. Counsel was unable to tell me what stage the proceedings had reached but I assume no receiving order has been made as the prayer seeks a receiving order.
6. I take my guidance from the constitution which provides:

“19. (1) The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.

(2) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.

(3) The rights and fundamental freedoms in the Bill of Rights—

(a) belong to each individual and are not granted by the State;

(b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and

(c) are subject only to the limitations contemplated in this Constitution.

20. (1) The Bill of Rights applies to all law and binds all State organs and all persons.

(2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

(3) In applying a provision of the Bill of Rights, a court shall—

(a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and

(b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

(4) In interpreting the Bill of Rights, a court, tribunal or other authority shall promote—

(a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and

(b) the spirit, purport and objects of the Bill of Rights. Constitution – Inhuman treatment.

Article 51 provides:

51. (1) A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.

(2) A person who is detained or held in custody is entitled to petition for an order of *habeas corpus*.

(3) Parliament shall enact legislation that—

(a) provides for the humane treatment of persons detained, held in custody or imprisoned; and

(b) takes into account the relevant international human rights instruments.

7. As a matter of logic and common sense, it is clear that the Applicant has no prospect of repaying his debts while he is in prison. In the circumstances, I order his immediate release.

ORDER:

1) A Receiving Order against the Petitioner herein be issued.

2) Order of stay of execution against the Petitioner herein and the officer in charge of the industrial Area Prison be and is hereby ordered to release PAUL KIMURI KIRIMI from civil jail.

3) THAT there be no order as to costs as the representation was pro bona.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2015.

FARAH S. M. AMIN

JUDGE

In the presence of:

Mr. Mbiu court clerk.

Mr. Masika Counsel for the Applicant.