

REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
BANKRUPTCY CAUSE NO. 1 OF 2010

ABUBAKAR A. H. MOAHMEDJUDGMENT CREDITOR

VERSUS

AHMED MOHAMED SAID AL AMOUDY.....JUDGMENT DEBTOR

RULING

The application dated 9th February, 2015 seeks to replace the trustee appointed on 19th February, 2014. it is brought under Section 96 and Rule 273 of the Bankruptcy Act, Chapter 53 Laws of Kenya. The applicant contends that he is the secured creditor. In his supporting affidavit, the applicant contends that as a creditor, he has the power to appoint or remove a trustee. The main reason for the removal of the current trustee is that he has failed to take any action from the date of his appointment against the debtor.

I have gone through the entire court file. It is clear to me that the applicant has formed the habit of filing several applications. It is the applicant who brought in the current trustee in November, 2014. The current application was file on 9th February, 2015. There is no indication that the current trustee was served with this application or that the proposed new trustee is willing to take up the position of a trustee. Similarly, there is a notice of appointment of advocates by the firm of Mwaure & Mwaure Waihiga Advocates for the applicant filed on 12th November, 2014. the current application was filed by the applicant himself in person. It is not clear whether the applicant has decided to remove his advocates. The applicant should note that its not in the court's interest to approve the appointment and replacement of trustees in bankruptcy matters within short spells. Trustees are entitled to commission r payment for their work and frequent changes normally leads to expenses which the court should limit taking into consideration the fact that these are bankruptcy proceedings: there is need to curtail abuse of the bankruptcy process. Its in an open door for creditors to appoint and dismiss creditors at will.

For purposes of clarity and proper case management, and taking into account the fact that the applicant is a creditor, I do make the following orders:

1. The proposed trustee ADEN DEKKOW KOSSAR to file an affidavit indicating that he is willing to take up the position of a trustee in this matter.
2. The current application to be served upon the current trustee, MR. JAMES KAMAU MWANGI.
3. Mr. James Kamau Mwangi to file an affidavit or report indicating what he has did from the time of his appointment up to date and indicate whether he is ready to be replaced.
4. The order 1, 2 and 3 above to be complied with within twenty one (21) days hereof.

Once the above orders are complied with, the court will determine the chamber summons dated 9th February, 2015.

Dated and delivered at Malindi this **11th** day of **March, 2015**.

Said J. Chitembwe

JUDGE