

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Bankruptcy Cause 1A of 1982

Mukesh Kewal Krishnan Rakhm Pallan Debtor

RULING

Mr M.K.K.R Pallan, the debtor, is 32 years of age. Between 1979-82 he was engaged in business on his own. It was re-packaging. Towards the beginning of 1981, he ran into difficulties. He himself said it was all due to his inexperience. He owed debts totalling Shs.24,000/- and was unable to pay them. Some of his creditors obtained judgment against him and proceeded into execution. His assets were seized under a writ of Fieri Facias and were taken over by auctioneers for sale.

For this reason, he on his own, accordingly petitioned the Court under Section 8(b) of the Bankruptcy Act that he was unable to pay his debts. Shortly before taking this action, he filed with the official Receiver a statement of his affairs in accordance with Section 16 of the Act. On the 13th January 1982, the Court made a Receiving Order against his property and directed that copies of the order be sent to the official Receiver and all District Registries of this Court. The Court directed that public examination of the debtor be held in accordance with Section 17 of the Act and fixed the 4th March 1982 for this purpose. It was subsequently adjourned to the 7th May last. On that day, the debtor appeared in person before me. Although the Receiver duly notified the creditors in accordance with Section 153 of the Bankruptcy Rules, of the date, hour and place of the examination, no creditor appeared. The Official Receiver was however, represented by two advocates Mr Agina and led Mr Ndisya.

The debtor was examined by the official receivers' Senior Advocate. No other witness appeared, so the only information the Court obtained was what the debtor himself related.

He said he did not indulge in extravagant living when he was carrying on his business. He does not smoke or drink. He put the failure of the Business to his lack of experience. He said he had a large labour force of 12 and paid as much as Shs. 10,000/- per month in rent. At the date when he petitioned to the Court, his account books were with his auditors. He has since delivered all these to the trustee. He swore that he did omit anything in his statement of affairs.

He said he made a proposal to all his creditors but there was no reaction from any of them. He owns no immovable property. He only had a VW Combe Minibus, some drums and cash of about Shs 800/- in the bank when his business failed. His total indebtedness at the date of the presentation of the petition was, Shs. 240,000/- He says, he has since paid Shs 35,000/- of the debt.

At present he has no regular work. He sometimes arranges mechanics to repair cars for a living. Although a bachelor at the date of the failure of his business in 1981, he has since married. His wife works and helps with her salary to keep the house.

The debtor struck me as an honest and straightforward witness and as there is no other evidence contradicting of what he swore, I am prepared to accept and do accept his testimony as to his conduct, dealings and property. In the circumstances and in the absence of any other evidence, I am of opinion that this affair has been sufficiently investigated within the meaning of subsection 10 of Section 17, of the Bankruptcy Act.

I therefore declare that the examination of the debtor is concluded.

May 12, 1986

Apaloo, J