



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
BANKRUPTCY CAUSE 28 OF 1963
RE: CHARAN SINGH S/O KESAR SINGH-DEBTOR

AND

IN THE MATTER OF AN APPLICATION BY MOTION BY
CHARAN SINGH S/O KESAR SINGH -APPLICANT

JUDGEMENT

The applicant was adjudged bankrupt on his own petition on 11th October, 1963.

The Official Receiver is the trustee in bankruptcy.

The applicant who is unrepresented by counsel is seeking

- a) The setting aside of the receiving order made against him
- b) The rejection of the claims of two allegedly fraudulent creditors and
- c) The revocation of the appointment of the Official Receiver as trustee and the appointment of a new trustee.

There are in fact two notices of motion in identical terms, one fixed for hearing on 10th January, 1972, and the other on 12th January, 1972.

The two so called “fraudulent creditors” are each represented by counsel.

All parties agreed that the matter should proceed as one motion.

Mr. Upadhyay for the official Receiver informed the court that pending counsel’s opinion no action has yet been taken on the claims of the alleged fraudulent creditors.

The court has therefore no jurisdiction to consider (b) the second aspect of the application.

As far as (a) is concerned, the setting aside of the receiving order, since the applicant is unrepresented I shall treat it as an application for annulment of the adjudication under section 33(1) of the bankruptcy Act (Cap. 53) on the ground that the debtor ought not to have been adjudged bankrupt.

I propose to consider the application despite the inordinate delay because the bankrupt is clearly suffering under a deep sense of grievance and has been since his adjudication.

Although the appointment of trustee is a matter for the creditors I do not think I am debarred from any consideration of (c) the revocation of the appointment of the Official Receiver as trustee and the appointment of the new trustee. Under section 82 the bankrupt may apply to the court for the reversal or modification of any act of the trustee and under section 96(2) the court may remove a trustee from office for among other reasons misconduct, failure to perform his duties, needless protraction without advantage to the creditors.

For these reasons I decided it would be proper to hear and consider the bankrupt's complaints despite procedural defects. Although the representative of the official Receiver submitted that the court had no jurisdiction this was not raised as a preliminary objection by any of the respondents.

It may be added that this is not the first application of this nature made by the bankrupt. Two previous applications were dismissed as misconceived but these decisions are not in my opinion such as would support a plea of res judicata.

One judge recommended that legal aid be granted to the applicant but no doubt owing to the complex nature of the bankrupt's complaints coupled with a mental condition bordering on the psychotic which the bankrupt admits with engaging frankness no practitioner could be found willing to undertake the task.

The bankrupt's Statement of Affairs shows a substantial surplus and he alleges that in fact the assets were considerably undervalued. If such were the case his bankruptcy petition becomes incomprehensible. The reason he himself gives that he was merely short of ready cash is unacceptable.

The assets were in fact grossly overvalued. They consisted mainly of items of machinery such as tractors which had outlived their usefulness. The bankrupt failed to take account of the extent of their depreciation.

£ These assets were valued by the court broker, dealers circularized and highest offers accepted. These were well below the valuation of the court broker. Stock in trade valued by the bankrupt at *1,250 in the Statement of Affairs and subsequently claimed by him to be worth *7,500 realized only *400. Machinery valued in the statement of Affairs at *11,800 was valued by the court broker at *2,000 to *2,250 of which the bankrupt was entitled to one-half the remaining half being the property of his brother and partner.

The bankrupt has produced no evidence in support of his estimates of value and I am satisfied that the Official Receiver took all necessary action to obtain the best possible price for these assets. The fact cannot be overlooked that in a bankruptcy as in execution proceedings prices realized are very frequently somewhat below the market value.

One allegation of the applicant concerned a tractor given to his brother, Gurcharan Singh, a creditor and the bankrupt's partner in a business known as Earth-Moving and Land Clearing Co. The tractor was one of the assets of the partnership valued by the court broker at *2,000 – *2,250. The tractor was valued at *1,000 – *1,250. It was given to Gurcharan Singh as his one-half share. I can see nothing improper in this. The balance realized only *350 but Gurcharan Singh had offered more than the amount of the valuation. This was refused by the official Receiver in view of the allegations made at the time by the bankrupt.

Again in his statement of affairs the bankrupt showed his secured creditors at *3,800, estimated value of securities *12,000 leaving a balance of *8,200. These securities were subsequently (November, 1963) valued by the commissioner of Lands at *5,350.

The delay in finalizing the accounts is regrettable but is in the interests of creditors. Only one property remains to be realized. Mortgagees have appointed a receiver to collect rents and reduce the charge and at present oppose the realization.

In the meantime however the value continues to appreciate. The Official Receiver expects to be able to sell this property in about 2 years time and considers that the creditors will gain significantly by the delay.

The Official Receiver also blames the UN co-operative attitude of the bankrupt for delays and having observed and listened to the applicant I have little doubt that these allegations are not entirely without substance.

I am satisfied that the official Receiver has not needlessly protracted his trusteeship.

Another of the bankrupt vague allegations concerns falsification of accounts by or on the instructions of the partner.

The bankruptcy investigation accountant obtained possession of all relevant books of account none of which were properly written up to disclose the full state of affairs of the partnership. The books were in the possession of the firm's accountant and each partner alleged that the books were in possession of the other.

The Official Receiver appears to have done all he could with the unsatisfactory material of which he took possession and there is nothing in the bankrupts allegations to lead me to form an opinion that the trustee was in any way guilty of misconduct or failure to perform his duties under the act.

The bankrupt complained that the official Receiver had failed to continue litigation commenced by him, in particular two cases in which he was involved.

In one of these civil cases 411 of 1962 an appeal was filed but later abandoned by the Official Receiver as unlikely to succeed. He did this without consulting the bankrupt as he was entitled to do. I cannot say that he was in fault at doing so.

In another civil case, 900 of 1962, considerable difficulty has been encountered in persuading counsel to continue the proceedings. The case has now been assigned to another firm of advocates and further action is pending.

Only the other matter calls for comment. The bankrupt complained that he has been paid nothing by way of maintenance. Where as in this case the estate is a small one there is no obligation upon the trustee to pay any sum to the bankrupt by way of maintenance but in fact a total of Kshs.3, 000/- has been paid. The bankrupt has certain qualifications and experience which should enable him to obtain employment but he appears to have no wish to do so. The official Receiver has had no time refused permission to take up gainful employment and indeed allowed him at one time to become a partner in a garage business at Eldoret which however failed.

I have dealt with the main allegations of the applicant in detail. Although not specifically mentioned I have given due consideration to all of his other allegations and complaints as well as to such of the authorities cited by him as are relevant.

The applicant's allegations are based entirely upon suspicion, unsupported by factual evidence. I can find no substance in them.

The bankrupt was adjudged bankrupt on his own petition. His liabilities amounted to approximately *9000. His assets properly valued disregarding the lower prices actually obtained amounted to approximately *7000. No case has been made out to support his contention that the receiving order ought to be set aside (assuming it were possible to set it aside at this stage) or that the adjudication should be annulled. No grounds have been shown for the revocation of the appointment of the Official Receiver as trustee and the appointment of a new trustee. Moreover the bankrupt himself appeared to be aware that even if the appointment were to be revoked it would be impossible to find another person willing to assume the responsibilities of trustee in this bankruptcy.

The application is accordingly dismissed and it is to be hoped that having finally obtained a full hearing of his grievance the applicant will now attempt to find suitable employment and desist from interfering with the duties of the trustee.

A.H SIMPSON

JUDGE

20.1.72