



REPUBLIC OF KENYA



**In re Kiberie Maigwa (Insolvency Cause E001 of 2025)  
[2025] KEHC 13304 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13304 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
INSOLVENCY CAUSE E001 OF 2025  
RN NYAKUNDI, J  
SEPTEMBER 29, 2025  
IN THE MATTER OF THE INSOLVENCY ACT, ACT NO. 18 OF 2015  
AND  
IN THE MATTER OF KIBERIE MAIGWA**

**RULING**

1. Vide a Debtor's Petition dated 26/04/2025 filed in Court on 29/04/2025, Kiberie Maigwa, a resident of Eldoret, petitioned to this Court for a Bankruptcy Order on grounds that he was unable to pay his debts. He prayed that he be adjudged bankrupt. Annexed to the Petition is his Statement of Affairs (Individual Person) (Form No. 11) reflecting assets worth Kshs.12,500/= and liabilities to the tune of Kshs.2,845,006/=. His Creditors whose debts are unsecured are shown as Joshua Kiptoo Kshs.411,000/=; Leah Chemutai Chumo Kshs.2,022,832/= and Lucy Njeri Kahenya Kshs.411,174/=.
2. Additionally, the Petitioner provided information relating to his affairs and also filed an affidavit dated 26/04/2025 deposing that he is a businessman but unfortunately the business collapsed. He further deposed that for the period between year 2023 and 2024, his net income was barely Kshs.11,000/=, that his total income for the year 2023-2024 was Kshs.43,300/= and that his expenditure analysis for the year 2023-2024 were as follows; domestic expenses per month for food at Kshs.4,000/=, subsistence expenses at Kshs.2,000/=, utility bills for electricity at Kshs.250/=, personal medical care expenses per month at Kshs.500/=, other annual expenses such as transport, welfare among others at Kshs.23,000/= and that his total net deficit amounts to Kshs.68,200/=. He maintained that as a consequence he heavily relies on relatives and well-wishers for his survival as he has been unable to meet his expenses with the meager earning he gets from the business which is basically small scale and that he is heavily indebted to various people including friends and relatives and other debtors as follows: Leah Chemutai Chumo Kshs.2,022,832/=, Joshua Kiptoo Kshs.411,000/=, Lucy Njeri Kahenya Kshs.411,174/=, Peter Motari Kshs.44,000/= and Sundry Creditors Kshs.110,000/=. He asserted that the huge debt was incurred due to a road traffic accident involving his then matatu business and the amount is over and above what his insurer were statutorily required to pay in indemnifying him and that pursuant to the warrants



of arrest dated 25/07/2024 and 26/08/2024, the decretal sum aforesaid is to be dispensed to Leah Chemutai Chuma and Lucy Njeri Kahenya is Kshs.2,434,006/=.

3. He deposed further that he has no other assets such as cash at hand, furniture, personal effects, securities, house, land, buildings, motor vehicle, motor cycle, bicycle, recreational equipment and life insurance policies, that he is unable to pay such debt and he apprehensive that his committal to civil jail again after serving the current term is imminent yet the same is purely due to poverty and not a desire to refuse to pay the said debts, that he is unable to pay debts within the meaning of the Bankruptcy Act and therefore do petition this honorable Court for orders that a Receiving Order be made in respect of his estate and that as much as he would try to save each and every coin that comes his way, it has proved huge task as every coin goes into the very essentials of life. He therefore urged the Court to grant the orders sought in the petition to save him the embarrassment of a further civil jail term due to his poverty and for a trustee to be appointed to manage my estate.

### **Determination**

4. I have considered the application and the Affidavit sworn in support. I find that the only issue for determination is whether the Applicant herein can be declared bankrupt.
5. The guiding principle of insolvency laws and procedures is that, in the event that a debtor is unable to find other solutions to their financial problems, they have the right to file for bankruptcy in order to obtain relief from overwhelming debt. However, because to its severe repercussions, bankruptcy is considered a last choice.
6. While it is necessary for a debtor to be protected by a bankruptcy order, the petition must be filed honestly and without material non-disclosure. There must be unambiguous evidence of true insolvency. It is imperative that the founding affidavit make a strong argument for the petitioner. The claim needs to show that the Petitioner is "factually and commercially" bankrupt. Commercial insolvency, which is simply a means of expressing that a debtor is unable to pay his debts when they become due, is merely a tool used to shift the burden of proof, making it the debtor's responsibility to demonstrate that his assets outweigh his liabilities. It is not a sufficient reason to issue an insolvency order on its own.
7. To establish insolvency; it must be shown that the debtor's liabilities as a fact exceed his assets and not merely that they might do so, and clear proof of this must be adduced. An applicant must make a prima facie case. In addition, even if the Petitioner had established a prima facie case, the Court has a discretion whether or not to grant the order. The Petitioner failed to address the Court and to put forward any facts justifying any special circumstances why the Court should exercise its discretion in his favour.
8. Inability to pay debts is a fact to be proved by evidence. It is not to be assumed that because the petitioner says that he is unable to pay debts the Court should believe his word of mouth. A Petitioner who wants to be adjudged bankrupt must lay before Court concrete evidence to enable the Court make a determination based on that evidence that indeed the person is bankrupt. The Court cannot act as an aid instrument to allow a person run away from his financial obligation towards his creditors. This is so because once adjudged bankrupt, the debtor is tossed beyond his creditors' reach.
9. It must also be clear to any Applicant that the purpose of bankruptcy proceedings is to protect the debtor from undue pressure from creditors, preserve fairness among the creditors, and discharge the debtor from his liabilities and enable him to start afresh. This favor should however go to a person who is genuinely bankrupt and unable to pay debts.



10. I am guided by the English case of *Corner Shop (Pty) Ltd v Moodley* 1950 (4) SA 55 (T) at p 60, where the Court observed that;

The inability to pay a debt should not be taken out of its context, for it may be “consistent with a state merely of temporary financial embarrassment” or due to “commercial insolvency” in circumstances where a Debtor’s liabilities do not exceed the value of his assets.” At the same time, one must bear in mind the principle that the Court will not make an order for compulsory bankruptcy on the ground of general insolvency unless the facts are clearly proved”

11. In the matter of *Ali Jillo Fallan (Insolvency Cause 6 of 2018)* [2021] KEHC 8 (KLR), the Court observed as follows;

“The proper approach in deciding the question whether a Bankruptcy order should be issued on this ground appears to me, to be that, if it is established that an individual is unable to pay his debts, in the sense of being unable to meet the current demands upon it, his day-to-day liabilities in the ordinary course of his business, it is in a state of commercial insolvency; that he is unable to pay his debts may be established by proper evidence.”

12. In present case, the Petitioner did not demonstrate his inability to pay the debts. Rather he stated his income and expenditure but had no intention of repaying the debts. Only where inability to pay debts is satisfactorily proved would the Court adjudge a debtor bankrupt. I have no doubt in my mind, that the petition as presented was intended to evade paying just and due debts.

13. The other important issue is conformity with the Regulations and the Act. Section 32 of the Act provides as follows: -

When debtor may make application for bankruptcy order

1. A debtor may make an application to the Court for an order adjudging the debtor bankrupt only on the grounds that the debtor is unable to pay the debtor’s debts.
2. The Court may decline to deal with such an application if it is not accompanied by a statement of the debtor’s financial position containing—
  - a. such particulars of the debtor’s creditors and of the debtor’s debts and other liabilities and assets as may be prescribed by the insolvency regulations; and
  - b. such other information as may be so prescribed.
3. The Court may reject a statement of the debtor’s financial position if of the opinion that it is incorrect or incomplete.
4. A debtor who makes an application under this section shall publish a notice of the application in—
  - a. a newspaper circulating within the region in which the debtor ordinarily resides; and
  - b. in such other publications (if any) as may prescribed by the insolvency regulations for purposes of this section.
5. The Court may decline to hear the application if subsection (4) has not been complied with to its satisfaction.



14. The Regulations stipulate the documents to accompany the Petition and the details to be included in the statement of the debtor's financial position. A reading of Regulation 18 and the information filed by the Petitioner shows that the Petitioner did not exercise diligence in providing all the details required under the said Regulations.
15. Additionally, Regulation 18 (4) requires the debtor to sign and date the 'statement of the debtor's financial position and arrange for the publication of the statement in the Kenya Gazette. There is nothing to show that the Petition was Gazetted in the Kenya Gazette as the law requires. Insolvency proceedings are class actions by their very nature. This is the reason why the proceedings are advertised in newspapers and the Kenya Gazette. The advertisement affords creditors the opportunity to come forward to either oppose or support the Petition. The Petitioner was required under the law to comply with the regulation and Gazette the Petition. He did not. On the foregoing grounds, the competence of the Petition for want of conformity with the rules is questionable. Such a serious violation of the law cannot be ignored by the Court. A practice that could lead to injustice cannot be tolerated by the Court.
16. Having considered the petition, the statement of affairs, evidence by the Petitioner, it is plain that the Petitioner did not prove that he is genuinely unable to pay debts and should be adjudged bankrupt. Since inability to pay debts is a fact to be proved, the Petitioner bore that burden to be discharged on a balance of probabilities, a burden the Petitioner did not discharge. In the premise, the conclusion I come to is that the Petitioner has not demonstrated inability to pay debts. This petition was brought with the sole purpose of avoiding to pay just debts.
17. In view of the foregoing, it is my finding that the petition herein is unmerited and is hereby dismissed.

**DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 29<sup>TH</sup> SEPTEMBER 2025**

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**R. NYAKUNDI**

**JUDGE**

