

**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMMIC NO. E001 OF 2024**

**HON. JUSTICE ALEEM VISRAM**

**2<sup>ND</sup> OCTOBER, 2025**

**INSOLVENCY PETITION NO. E001 OF 2024**

**AND**

**IN THE MATTER OF ROBINSON GATHURI GATHAIYA**

**AND**

**IN THE MATTER OF THE INSOLVENCY ACT (CHAPTER 53 OF THE LAWS  
OF KENYA)**

**JUDGMENT**

1. By a Petition dated 26<sup>th</sup> September, 2023, the Petitioner seeks a bankruptcy order against himself and his estate for the reason that he is unable to pay his debts. He states that on or around 21<sup>st</sup> November, 2021, he took out a loan from NCBA Bank Kenya PLC to start a business, which loan was secured by two motor vehicles, but his business failed, and he defaulted on the payments. The NCBA Bank repossessed and sold the motor vehicles, but the sale proceeds didn't cover the outstanding loan amount. The Bank then sued to recover the remaining debt and judgment was entered in their favor on 20<sup>th</sup> April, 2023, for Kshs. 2,838,984.03/-.

2. The Petitioner contends that he has no assets capable of being sold to settle the debt owed to NCBA Bank, as another bank, Cooperative Bank, had already sold his land to recover their own loan arrears. He further states that he is also unemployed and has no source of income. The Petitioner states that he has complied with all the requirements for a person applying for bankruptcy under the Insolvency Act. There was no response to the petition.
3. The Petitioner has supplemented and argued out his petition by way of written submissions. He cites a previous case, *In re Bornface Wambua Kioko [2024] KEHC 16962 (KLR)* where the court found that a Petitioner who published the required notices and was not opposed by creditors had proven their inability to pay debts. In this case, the Petitioner notes that the creditors "have shown total disregard to the notices to show up in court". He further relies on:- *In Re The Matter of Zipporah Wambui Mathara [2010] KEHC 4136 (KLR)* to argue that denying a Petitioner a bankruptcy order goes against the basic principles of the Bill of Rights.
4. In his concluding submissions, the Petitioner states that granting the bankruptcy order would be "reasonably fair and just to give him a fresh start" to help him pay his debts.
5. I have considered the Petitioner's petition and the submissions as summarized above. The twin goals in relation to individual bankruptcy law are to protect creditors and ensure optimal payment to them where possible; and the provision of shelter and a "fresh start" to individual debtors overburdened by debt. This was observed by Prof.

Ngugi J., (as he was then) *In re James Maina Kabatha (Debtor/Applicant)* [2020] KEHC 2685 (KLR). The Learned Judge stated that: -

*“3. The “fresh start” goal is accomplished through the bankruptcy discharge, which usually releases the debtor from personal liability from certain debts and prevents creditors from taking any action against the debtor to collect those debts.*

*4. Consequently, bankruptcy protection being an extraordinary relief, one of the corollaries to these seemingly conflictual twin goals of bankruptcy law – the protection of creditors and the provision of fresh start for the honest but unfortunate debtor -- is that an individual seeking bankruptcy protection is required to scrupulously demonstrate that he is acting in good faith and disclose all his financial information.*

*5. It is only upon meeting this double threshold – demonstration of good faith and full disclosure of all financial information – that a Petitioner can become entitled to a bankruptcy order. The architecture and structure of the Insolvency Act and Insolvency Regulations, 2018 reinforce these double threshold for individual Petitioners.”*

6. Based on the deposition and the facts in the present matter, I am satisfied that the Petitioner has indeed complied with Section 32 of the Insolvency Act. He has annexed his statement of financial position containing particulars of his assets and liabilities; and

he has annexed an affidavit of service indicating that the petition was published in the Standard newspaper of Monday, 22<sup>nd</sup> April, 2024, which newspaper he stated, has a nationwide circulation.

7. It is evident that since 20th April, 2023, the total amount owed to NCBA Bank, including interest and costs, was Kshs. 2,838,984.03/- and that he remains unable to pay this amount. It is not disputed that he is unemployed, has no source of income, and possesses no assets. Additionally, his sole parcel of land, Loc.17/Iganjo/2288 was sold by Co-operative Bank to settle a separate debt.

8. The above facts are sufficient to conclude that the Petitioner is indeed unable to pay his debts, and accordingly, I am satisfied that the threshold to issue a bankruptcy order has been met. I therefore make the following final orders: -

- 1) The Petitioner is hereby adjudged bankrupt and a bankruptcy order issued as prayed.**
- 2) The Official Receiver or a person nominated by the Official Receiver is hereby appointed as the Bankruptcy Trustee in respect of the Petitioner's estate.**

*Dated and delivered virtually via Microsoft Teams this 2<sup>nd</sup> day of October 2025*

**ALEEM VISRAM, FCI Arb  
JUDGE**

**In the presence of;**

**Court assistant: Lisper**

ORIGINAL