



REPUBLIC OF KENYA



KENYA LAW
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**Gitari v Family Bank Limited (Insolvency Cause 2 of 2023)
[2025] KEHC 15482 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
INSOLVENCY CAUSE 2 OF 2023
KW KIARIE, J
OCTOBER 29, 2025**

BETWEEN

WILSON MAINA GITARI PETITIONER

AND

FAMILY BANK LIMITED CREDITOR

JUDGMENT

1. Wilson Maina Gitari filed a petition dated September 16, 2021, seeking a bankruptcy order against himself and his estate. This petition is supported by his affidavit, sworn on September 15, 2021 and his statement of affairs. The petition is premised on the following grounds:
 - a. Unemployment or loss of income.
 - b. adverse legal action.
 - c. Excessive interest payments.
 - d. Lack of sufficient working capital.
 - e. Liabilities due to guarantees.
 - f. Unemployment or loss of income.
2. The creditor/respondent opposed the petition on the following grounds:
 - a. The application and the petition are misconceived, ill-advised and an abuse of the court process with no cause of action.
 - b. The borrower Wilson Maina Gitari, together with Ann Wanjiku Gichuhi as the co-borrower, applied for a loan facility vide an application dated 10th September, 2015.



- c. Consequently, vide the letter of offer dated 10th September, 2015, the borrower was granted a secured Banking Facility of Kenya Shillings Two Hundred and Sixty Thousand Only (Kshs. 260,000.00).
- d. One Immaculate Njoki of identification No. 791xxx signed the said letter of offer as a guarantor.
- e. Following this, the facility was disbursed to the debtor on 16th September, to the tune of Kenya Shillings Two hundred and Sixty Thousand only (Kshs. 260,000.00) The secured facility was to be repaid directly from the Debtor's/borrower's savings account in 24 equal monthly instalments of Kenya Shillings Fifteen Thousand, Eight Hundred and Seventeen (Kshs. 15,817.00) until repayment in full for the secured facilities effective from 10th September, 2015.
- f. The nature of the said facility was to be utilised as a working capital for boosting his cereal and chicken rearing business, which had been in operation for 3 years prior to the loan application.
- g. The following securities secured the facility;
 - i) A registered chattels mortgage over household and business assets as described in the loan application; and
 - ii) Personal Guarantee and Indemnity by the guarantor, one Immaculate Njoki of identification No. 791xxx.
- h. The borrower breached the terms as agreed under the Letter of Offer by failing to honour her commitment, leaving the facility in arrears, which amounts that continued to accrue interest.
 - i. Failing to repay the loan facility as per the instalments agreed
 - ii. Failing to repay the instalments as and when they fall due; and
 - iii. Failing to clear the outstanding loan balance despite the demand issued.
- i. Despite failure to clear the outstanding loan balance, the creditor herein issued the debtor/borrower with a demand and pre-listing notice vide a letter dated 16th June, 2016, demanding full payment of the outstanding balance within 30 days. However, the debtor/applicant ignored and/or neglected to clear the outstanding arrears or comply with the said notice.
- j. The debtor herein has not adduced any evidence before this Honourable Court as proof of the alleged debts duly owed to other creditors other than the creditor/bank herein. The debtor had merely stated that he had liabilities spanning from other transactions without justification. Therefore, the instant application is an attempt by the debtor/borrower to avoid fulfilling their obligation under the Letter of Offer by not making full repayment of the loaned facility.
- k. Further, the Debtor has not adduced any proof of adverse legal action against him. He has also failed to adduce any document as proof of a lack of sufficient working capital.
- l. The Debtor has also failed to provide full names and details of individuals against whom he has accrued debt and the basis upon which such debt emanates. The claims by the Debtor ought to be corroborated by evidence, failure of which the Court cannot be able to ascertain the Debtor's true financial position.
- m. As per his loan application, the Debtor disclosed to the bank that the actual value of total fixed assets was Kenya Shillings One Million (1,000,000.00). Further, the Debtor declared that he earns a net household income of Kenya Shillings One Hundred and Two Thousand (Kshs.



102,000.00) on a monthly basis, comprising a monthly net salary of Kenya Shillings Twenty Thousand (Kshs. 20,000.00) together with a monthly profit of Kenya Shillings Eighty-Four Thousand (Kshs. 84,000.00).

- n. The Debtor has not disclosed to this Honourable Court the details concerning the fixed assets which had been used as security for the facility issued. The Debtor has also failed to disclose to this Court the full inventory of household items used as security, as compared to the items listed in the Debtor's Statement of Affairs.
 - o. The Debtor has merely asserted that his main cause of insolvency is due to unemployment and loss of income without any proof or financial statements to show that he is incurring losses from his business. He has also not adduced any document or termination letter to prove that he is no longer employed.
3. Bankruptcy protection is an extraordinary relief that safeguards creditors and ensures optimal payments when possible. It also offers shelter and a fresh start to individual debtors who are overburdened by debt. This was explicitly explained in *re James Maina Kabatha (Debtor/Applicant) NKR Insolvency Cause No. 4 of 2019 [2020] eKLR*, Prof. Ngugi (as he then was) said:
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 a 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 thresholds for individual Petitioners.
4. Before the court can hear the application for bankruptcy, it must be satisfied that the applicant has complied with sections 32 (4) and 34(5) of the *Insolvency Act* 2015 and Regulation 18(4) of the Insolvency Regulations.
5. Section 32 (4) and (5) of the *Insolvency Act* provides:
- (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.



6. The applicant has not demonstrated that he has complied with the requirements of subsection (4) quoted hereinabove. However, this defect is cured by section 696 (1) of the Act, if no party suffers any prejudice. The section provides:

A proceeding under this Act may not be invalidated or set aside for a defect in a step that is required to be taken as part of, or in connection with, the proceeding, unless a person is detrimentally affected by the defect.

7. In the matter of Ali Jillo Fallan (Insolvency Cause 6 of 2018) [2021] KEHC 8 (KLR) (Commercial and Tax) Mativo J. (as he then was) stated:

35. 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. The Petitioner only annexed a newspaper advertisement. 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. The court cannot shut its eyes to such a grave failure to comply with the law. The court cannot entertain a practice which has the potential of causing injustice.

8. In this case, the applicant has not demonstrated that the petition was gazetted in the Kenya Gazette and advertised in a newspaper as the law requires. In *Bowen v M Oriental Bank & 8 others* (Insolvency Cause 1 of 2019) [2022] KEHC 11212 (KLR), where there was similar noncompliance, E. K. Ogola J. struck out the petition. In this case, the petition will have the same outcome. Each party will bear its own costs.

DELIVERED AND SIGNED AT NYANDARUA, THIS 29TH DAY OF OCTOBER 2025

KIARIE WAWERU KIARIE

JUDGE

