

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

BANKRUPTCY INS CAUSE E002 OF 2024

IN THE MATTER OF: THE INSOLVENCY ACT (NO. 18 OF 2015)

BETWEEN

BETH WANJIKU.....
CREDITOR

=VERSUS=

ANTHONY GEORGE KAOGO.....
DEBTOR

JUDGMENT

1. The Creditor in this Insolvency Petition, **BETH WANJIKU MWANGI** filed this Petition seeking for orders that a bankruptcy order be made in respect of the debtor **ANTHONY GEORGE KAOGO** on the following grounds:-

(i) **THAT the said ANTHONY KAOGO has within the period of one year preceding the presentation of this Petition resided and carried on business at Voi within the jurisdiction of this Honourable Court.**

(ii) **THAT the said ANTHONY KAOGO is justly and truly indebted to the Petitioner in the aggregate sum of 14,938,800/- whereby ANTHONY KAOGO issued a**

Personal Guarantee and Indemnity for the outstanding debt of Kshs. 14,938,800.00 due and owing from New Generation Self Service Stores Limited to the Petitioner.

- (iii) THAT the aforementioned debt of Kshs. 14,938,800/= was on account of the supply of 8,434 bags of rice worth Kshs. 14,938,800 to the said New Generation Self Service Stores Limited and the breach and failure to make payment thereof.**
- (iv) THAT the Petitioner has served ANTHONY KAOGO with several demands and notices to settle the debt but ANTHONY KAOGO has defaulted to settle the said Kshs. 14,938,800.00 hereinafter referred to as the “Outstanding Amount.”**
- (v) THAT the amount owed by ANTHONY KAOGO is within the prescribed bankruptcy level in accordance with the Insolvency Act and Rules.**
- (vi) THAT ANTHONY KAOGO has been unable or have no reasonable prospect of paying the debt.**
- (vii) THAT there is no outstanding application to set aside the statutory demand in respect of the debt owed to the Petitioner by ANTHONY KAOGO.**

(viii) THAT 21 days have elapsed since the Petitioner served the Statutory Notice and demand upon ANTHONY KAOGO KAHENI and neither has he complied with or set aside the statutory demand.

2. The court directed the Official Receiver to file a report in respect of the debtor.
3. The report dated 3rd October 2025 was filed by the Official Receiver.
4. The Official Receiver stated as follows in the said report: That she recommends that the court grant the creditor's petition and declare Anthony George Kaogo bankrupt.
5. That the debtor, a 46-year-old former businessman from Voi, was a director of a company that collapsed after the Kenya Revenue Authority (KRA) moved swiftly to recover substantial tax arrears.
6. This action froze the company's bank accounts and led suppliers to cease trading with it, ultimately resulting in the company being placed under administration.
7. The specific debt of Kshs. 14,938,800 owed to Beth Wanjiku arose from a personal guarantee the debtor provided for a supply of rice to his company. His failure to pay this debt was a direct

result of the business's collapse, which was caused by circumstances beyond his control.

8. The debtor has admitted to the debt and could not comply with the subsequent statutory demand.
9. The Official Receiver finds that the debtor acted genuinely and is not in possession of any assets that could be attached and sold for the creditor's benefit, as all company assets were secured by financial institutions. Having been advised of the consequences of bankruptcy, the debtor consents to the process.
10. The creditor also recommends the Official Receiver's appointment as trustee, a role to which he has consented. Therefore, it is recommended that a bankruptcy order be issued for a period of three years with automatic discharge, in accordance with the Insolvency Act.
11. The Debtor is not opposed to the recommendations in the Report.
12. The court finds the petition by the creditor, Beth Wanjiku Mwangi, to be well-founded and unopposed, a position fortified by the comprehensive report from the Official Receiver.
13. The debt in question, amounting to Kshs. 14,938,800, is substantiated by a personal guarantee and indemnity provided by the debtor for the obligations of New Generation Self Service Stores Limited.

14. It is a foundational principle that a guarantor's liability is co-extensive with that of the principal debtor, and the failure of the company to pay has rightly activated the debtor's personal liability.
15. The statutory prerequisites for a bankruptcy order as set out in the Insolvency Act (No. 18 of 2015) have been satisfied.
16. The debtor resides within the jurisdiction of this court, the debt far exceeds the prescribed bankruptcy threshold, and more than twenty-one days have elapsed since the service of a statutory demand which has neither been complied with nor set aside.
17. The debtor's admission of the debt and his inability to pay, as corroborated by the Official Receiver's investigation, squarely fulfills the condition under Section 53(1)(b) of the Insolvency Act that the debtor appears to be unable to pay a debt.
18. The narrative presented, of a business failure triggered by the actions of the Kenya Revenue Authority leading to frozen accounts and a cessation of trade, while unfortunate, does not negate the legal obligation arising from the personal guarantee.
19. The purpose of the statutory demand is to give the debtor an opportunity to pay or compound the debt to avoid the drastic consequence of bankruptcy, and a failure to do so entitles the creditor to the order sought.

20. The court places significant weight on the report of the Official Receiver, which is a critical tool in bankruptcy proceedings for assessing the debtor's conduct and circumstances.
21. The report concludes that the debtor acted genuinely and that there is a lack of attachable assets for the creditor's benefit, with all company assets being secured by financial institutions. In the spirit of the Insolvency Act, which aims not merely to punish but also to rehabilitate honest but unfortunate debtors, the debtor's consent to the process is a relevant factor.
22. Consequently, and in the absence of any opposition, the Official Receiver is hereby appointed as the trustee of the bankrupt's estate.
23. Following the recommendation and in line with Section 126 of the Insolvency Act, the bankruptcy shall subsist for a period of three years, after which the debtor shall be automatically and unconditionally discharged.
24. During this period, the Official Receiver is mandated to manage the estate and file periodical reports with this court at six-month intervals.
25. Orders to issue accordingly.

Dated, signed and delivered this 14th day of November 2025 in open court at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

.....**for the Creditor**

.....**for the Debtor**

ORIGINAL