

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

BANKRUPTCY INS CAUSE E001 OF 2024

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

BETWEEN

BETH WANJIKU.....

CREDITOR

=VERSUS=

STEPHEN NGIGE KAHENI.....

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 **STEPHEN NGIGE KAHENI** on the following grounds:-

- (i) **THAT the said STEPHEN NGIGE KAHENI 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 STEPHEN NGIGE KAHENI is justly and truly indebted to the Petitioner in the aggregate sum of 14,938,800/- whereby STEPHEN NGIGE KAHENI**

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 STEPHEN NGIGE KAHENI with several demands and notices to settle the debt but STEPHEN NGIGE KAHENI has defaulted to settle the said Kshs. 14,938,800.00 hereinafter referred to as the “Outstanding Amount.”**
- (v) THAT the amount owed by STEPHEN NGIGE KAHENI is within the prescribed bankruptcy level in accordance with the Insolvency Act and Rules.**
- (vi) THAT STEPHEN NGIGE KAHENI 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 STEPHEN NGIGE KAHENI.**

(viii) THAT 21 days have elapsed since the Petitioner served the Statutory Notice and demand upon STEPHEN NGIGE 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 Stephen Ngige Kaheni, a 50-year-old resident of Voi, is the subject of insolvency proceedings.
5. That he is former self-employed businessman and managing director of New Generation Self Service Stores Limited, his financial downfall began when the Kenya Revenue Authority (KRA) swiftly moved to recover substantial tax arrears from his company.
6. This action included directing several banks to pay funds owed to the company directly to the KRA, which crippled the business by causing suppliers to withdraw their support.

7. Consequently, the company was placed under administration and later receivership, with all its assets being realized by secured creditors, leaving nothing for unsecured ones.
8. The specific debt in question is Kshs. 14,938,800 owed to Beth Wanjiku, for whom Mr. Kaheni had provided a personal guarantee for a supply of rice.
9. His failure to pay this debt stemmed directly from the collapse of his business, an event he maintains was beyond his control.
10. The creditor followed the proper legal process, serving a statutory demand which was not met. The Official Receiver finds that Mr. Kaheni acted genuinely and is convinced that he possesses no assets that could be attached and sold to benefit the creditor.
11. Due to these financial difficulties, he is now separated from his wife and children. The Official Receiver recommends that the court grant the creditor's petition, declaring Mr. Kaheni bankrupt for a standard period of three years with automatic discharge, and has consented to act as the Bankruptcy Trustee in this matter.
12. The Debtor is not opposed to the recommendations in the Report.
13. UPON READING the Insolvency Petition filed by the Creditor, BETH WANJIKU MWANGI, and upon considering the Report of the

Official Receiver dated 3rd October 2025, and the submissions made herein, the Court finds that a bankruptcy order is warranted.

14. The jurisdiction of this Court in bankruptcy matters is derived from the Insolvency Act, No. 18 of 2015. The Creditor has established the foundational elements for a bankruptcy petition as required by law.

15. It is not disputed that the Debtor, STEPHEN NGIGE KAHENI, has within the year preceding the presentation of the Petition resided and carried on business in Voi, thus satisfying the jurisdictional requirement under Section 17 of the Act.

16. Furthermore, the debt in the aggregate sum of Kshs. 14,938,800 is well above the prescribed bankruptcy threshold and is admitted by the Debtor through a Statement of Admission dated 24th February 2025.

17. The statutory demand dated 5th December 2023 was duly served upon the Debtor and was neither complied with nor set aside, and more than 21 days have elapsed since its service, as mandated by Section 18 of the Insolvency Act.

18. The central inquiry in a bankruptcy petition is whether the debtor is unable to pay his debts. This principle, enshrined in Section 19 of the Insolvency Act, where it is emphasized that the

inability to pay one's debts as they fall due is the central criterion for adjudicating bankruptcy.

19. The Report of the Official Receiver confirms this state of affairs. The Debtor's financial distress was triggered by a series of enforcement actions by the Kenya Revenue Authority against New Generation Self Service Stores Limited, a company of which he was a director and principal shareholder.

20. These actions, detailed in letters from the KRA dated 24th February 2022, 28th February 2022, and 1st March 2022, led to the freezing of the company's bank accounts and the eventual appointment of an administrator by its principal creditor, NCBA Bank Kenya PLC.

21. The consequent collapse of the company's business deprived the Debtor of his source of income, rendering him unable to honour the personal guarantee he had issued to the Creditor.

22. While a company is a separate legal entity from its directors, as famously established in **Salomon v. Salomon & Co. Ltd [1897] AC 22**, the practical reality is that the financial collapse of the company directly impacted the Debtor's personal capacity to pay his debts.

23. The Official Receiver has investigated the Debtor's affairs and found that he possesses no attachable assets, as all company assets were secured and realized by financial institutions.
24. The Creditor has not adduced any evidence to contradict this finding. In the circumstances, the Debtor's inability to pay is not due to wilful default but to circumstances beyond his control, a fact which the Report finds to be genuine.
25. In light of the foregoing, and pursuant to the powers conferred by Section 25 of the Insolvency Act, it is the duty of this Court to make a bankruptcy order.
26. The primary objective of the bankruptcy regime, as outlined in Section 3(1)(d) of the Act, is to provide an orderly system for adjudging natural persons bankrupt and for the efficient administration of their estates for the benefit of creditors.
27. Consequently, a bankruptcy order is hereby issued against the Debtor, STEPHEN NGIGE KAHENI.
28. The Official Receiver, who has consented to the act, is appointed as the Bankruptcy Trustee of the Debtor's estate in accordance with Section 36(5) of the Insolvency Act.
29. The Trustee shall manage the estate and is directed to file periodical reports with this Court at intervals of six months.
30. In accordance with Section 254 of the Insolvency Act, the bankruptcy shall subsist for a period of three (3) years, after

which the Debtor shall be automatically and unconditionally discharged from bankruptcy.

31. 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**