

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ELC LAND APPEAL NO. E010 OF 2024

JUSTUS WANYONYI WEKESA
APPLICANT

=VERSUS=

WILSON HAGGAI OLAKA.....APPELLANT/
RESPONDENT

RULING

1. For this court's determination is the Notice of Motion by the Applicant dated 05/09/2025 seeking to stay the proceedings of this honourable court. The application is premised on the grounds on the face of the application supported by the affidavit of the Applicant dated and sworn on even date.

2. In his supporting affidavit, the Applicant deposed that he holds a bankruptcy order and that his advocate on record ceased to act for him in unclear circumstances leading to the taxing of a bill of costs against him. He stated that he is unable to meet the costs and other remedies of this case as demanded by the bill of costs and that the instructed auctioneer has attached property which does not belong to him.

3. The Respondent filed a replying affidavit dated 11/09/2025 in opposition to the application stating that the Applicant is still represented by an advocate who was notified of the taxation. It was further deposed that the receiving order was rescinded and the suit dismissed by the court after no steps were taken to

conclude the suit on 06/10/2020. That the Applicant has not demonstrated that he was declared bankrupt as alleged and that he is not deserving of the orders sought.

4. The application was agreed to be canvassed by way of written submissions.

5. The Applicant filed submissions dated 15/09/2025 in support of his application where he gave a history of the matter and urged the court to find that he was adjudged bankrupt and cannot therefore be ordered to pay the costs in question.

6. The Respondent filed submissions dated 09/10/2025 and submitted that the Applicant is in violation of Order 9 Rule 9 for acting in person while he still has an advocate on record. It was further submitted that upon delivering its judgment, this court became *functus officio* and therefore the court cannot reopen the case for purposes of clarification. Lastly, it was submitted that since the court is *functus officio*, the orders sought cannot issue. Reliance was place *inter alia* in the cases of **James Wangalwa & Another V Agnes Naliaka Cheseto [2012] KEHC 1094 (KLR), Telkom Kenya Limited V John O. Ochanda John O. Ochanda (Suing on his Behalf and on behalf of 996 former employees of Telkom Kenya Ltd) [2014] eKLR and Omondi V Ouma (Civil Appeal E073 Of 2023) [2025] KEHC 13812 (KLR) (3 October 2025) (Judgment).**

7. The Applicant herein seeks to have this court stay its proceedings on the main basis that he is an adjudged bankrupt and as such, he is unable to meet the costs and other remedies issued by this court. The Respondent in opposition submitted that this court is functus officio and cannot issue the orders sought and that the Applicant has not demonstrated that he was indeed adjudged bankrupt. The Respondent produced a Notice to show cause said to have been issued to the Applicant contending that the bankruptcy proceedings instituted by the Applicant were dismissed for want of prosecution. It is important for this court to note that despite the Respondents assertions, the Applicant did not present further evidence to negate the said submission.

8. The Applicant placed before this Court a Receiving Order said to have been issued on 15/05/2006 in Bankruptcy Petition No. 30 of 2006, but produced nothing further to demonstrate that the matter ever progressed to an adjudication order, a final bankruptcy order, or the appointment of a trustee or Official Receiver as required in the ordinary course of bankruptcy proceedings. Equally, no evidence was tendered to show that the bankruptcy proceedings remain active or pending, notwithstanding the Respondents' assertion that the same were dismissed. This Court cannot ignore the fact that the Receiving Order was issued in 2006, yet the present application was only filed a few months ago.

9. While this Court appreciates the legal effect of a receiving order, it is nonetheless striking that, nearly two decades later, the proceedings appear to have remained stagnant at the very initial stage. It is important to note that a litigant would not be allowed the luxury of using the Receivership process solely to defeat a lawful process. In the absence of any material tracing the progress or subsistence of the bankruptcy cause, this Court is left with an incomplete and unsubstantiated picture of the alleged bankruptcy status.

10. Having considered the material placed before the Court, I am not persuaded that the Applicant has established any lawful basis to warrant the stay of these proceedings on account of bankruptcy proceedings. The Applicant has merely relied on an aged Receiving Order without demonstrating that the bankruptcy cause progressed to an adjudication order, a final bankruptcy order, or is presently under administration by an Official Receiver. No evidence has been presented to show that the bankruptcy proceedings are active, capable of triggering the statutory stay contemplated under the Bankruptcy Act.

11. In the circumstances, this Court finds that the alleged bankruptcy status has not been proved, and thus incapable of grounding or justifying a stay of proceedings. The application is therefore devoid of merit and the same is hereby dismissed. I make no order as to costs.

DATED, SIGNED and **DELIVERED** at **BUNGOMA** this 27th day of
November, 2025.

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HON.E.C CHERONO
ELC JUDGE

In the presence of;

1. Mr. Maloba for the Respondent.
2. Applicant-absent.
3. Bett C/A.