



REPUBLIC OF KENYA



KENYA LAW

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**Ngugi v Wangari (Commercial Insolvency E001 of 2025)
[2025] KEHC 17364 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
COMMERCIAL INSOLVENCY E001 OF 2025
FN MUCHEMI, J
NOVEMBER 20, 2025**

BETWEEN

REGINA NJERI NGUGI DEBTOR

AND

DORCAS WANGARI RESPONDENT

RULING

1. The petition dated 19th May 2025 seeks for orders of allowing the debtor to make a scheme of arrangement to pay her creditors pursuant to section 304(1) of the *akn ke act 2015 18 Insolvency Act* and an order of stay of any action against her properties by the creditors. The petition further seeks for the appointment of the Official Receiver as the supervisor of the scheme of arrangement pursuant to Section 304(3) of the *akn ke act 2015 18 Insolvency Act*.
2. In opposition to the petition, the respondent filed a Replying Affidavit dated 28th July 2025.

Debtor's Applicant's Case

3. The applicant states that she entered into a sale agreement with the respondent for purchase of a parcel of land. The applicant further states that on 4th April 2019, the trial court Thika Chief Magistrate Court in Civil Case No. 649 of 2018 entered judgment against her for a sum of Kshs. 2,530,000 - with interest at court rates until payment in full. The applicant avers that she has a debt balance of Kshs. 2,693,650 - owing to the respondent but she is unable to pay her debts within the meaning of the *akn ke act 2015 18 Insolvency Act* and thus urges the court to allow her to make a scheme of arrangement and for the appointment of an official receiver as the supervisor of the voluntary arrangement.

The Respondent's Case

4. The respondent states that she and the petitioner entered into an agreement for the sale of one acre of land to be excised from Title Number IR 9976 which measured approximately 19.80 Ha vide Sale



- Agreement dated 12th February 2025. The petitioner represented herself as a beneficial owner entitled to at least 5 acres of the said property registered in favour of her mother Teresiah Wanjiku Ngugi.
5. The respondent avers that she instituted a suit against the petitioner after she failed to subdivide and transfer the property in issue following payment of Kshs. 1,180,000 for the purchase. The respondent states that she sought recovery of Kshs. 2,530,000 - which was inclusive of liquidated damages of Kshs. 1,350,000 which was equivalent to 30% of the total purchase price as expressly provided in the said sale agreement. Interlocutory judgment was entered against the petitioner for the amount of Kshs. 2,530,000 - together with costs and interest cumulatively totaling to Kshs. 2,693,650 -.
 6. The respondent states that the parties recorded a consent dated 2nd October 2019 for the payment of Kshs. 2,894,225 - inclusive of execution fees whereby the petitioner specified that she would pay Kshs. 100,000 - on 2nd October 2019; Kshs. 2,797,225 - on 14th November 2019 and in default, execution to issue. Despite the entry of judgment and filing of the consent, the petitioner has failed or refused to settle the decretal sum.
 7. The respondent avers that she filed a Notice to Show Cause against the petitioner who proposed to settle the decretal sum through her letter dated 22nd April 2024 whereby she would pay Kshs. 1,000,000 - within 3 months of the said date and Kshs. 1,699,650 - within 3 months of payment of the initial amount. The respondent argues that the said commitment by the petitioner was proof of her financial standing which contradicts her position in the current proceedings.
 8. The respondent argues that the current petition ought to be dismissed as it does not conform to the express provisions of Section 32(4) of the *akn ke act 2015 18 Insolvency Act* as the petitioner has not adduced any evidence of a newspaper circulation together with a Kenya Gazette publication in line with Regulation 18(4) thereof. Thus in default of compliance of such mandatory requirements, the court may decline to hear the instant application which prayer is herewith pleaded in line with Section 32(5) of the Act.
 9. The respondent states that Regulation 18(3)(m) provides that a debtor must file a statement of their financial position which includes a statement of their assets including their description, location and value which the petitioner has failed to do considering that she had represented to her to have been entitled to 5 acres of the suit property and thus no explanation has been offered to substantiate why the same property cannot be utilized to satisfy the decretal amount.
 10. The respondent refers to the case of *Re Jeremiah Koskei Bowen (Insolvency Cause E038 of 2022) [2023] KEHC 1223 (KLR)* and states that the petitioner cannot be aided by the instant proceedings as the sale of property amounted to a fraudulent scheme and thus cannot run away from her actions.
 11. The applicant filed a Further Affidavit dated 30th July 2025 and states that she received funds towards the purchase price of the suit property. The applicant argues that she is unable to raise funds and with the difficult financial and business environment she is unable to satisfy the decree.
 12. The applicant states that the present matter relates to hearing of an application rather than the petition which is yet to be heard and the court before hearing the petition shall direct the same to be advertised. Further, the applicant states that Section 320 of the *akn ke act 2015 18 Insolvency Act* does not specify when the application in the newspaper should be undertaken.
 13. The applicant avers that she has made full disclosure of her statement of affairs detailing what she has and her inability to satisfy the decretal sum.
 14. Parties put in written submissions.



The Applicant's Submissions

15. The applicant relies on Section 304, 305 and 306 of the *akn ke act 2015 18 Insolvency Act* and the cases of *Anyenga vs Gulf Africa Bank Limited & Another (Insolvency Petition E056 of 2021) [2023] KEHC 22008 (KLR)* and *Re Joyce Wanjiku (Debtor) [2020] eKLR* and submits that the applicant has made a proposal to make a scheme of arrangement to pay her creditors, she is unable to pay her debts within the meaning of the *akn ke act 2015 18 Insolvency Act*, as can be deduced from her statement of affairs, she has proposed that the official receiver of Kenya be appointed as the supervisor of the scheme of arrangement and that she has never made any previous application for an interim order. The applicant argues that she has demonstrated that she is deserving of the interim order of stay of execution.

The Respondent's Submissions.

16. The respondent refers to Section 32 of the *akn ke act 2015 18 Insolvency Act* and Rule 18(4) of the *Insolvency Regulations 2016* and submits that the debtor's application does not conform with the said provisions. As such, the respondent urges the court to dismiss the said petition.
17. The respondent argues that the petitioner herein entered into an agreement for the sale of land and as soon as she received Kshs. 1,180,000 - she failed to complete her obligations thus being in breach of contract. It is thus evident that the petitioner defrauded her of her money which renders the whole transaction fraudulent.
18. The respondent submits that she obtained a judgment from a competent court that entitled her a sum of Kshs. 2,693,650 - which she is entitled to in law and thus the petitioner cannot circumvent the process to prejudice her. To support her contentions, the respondent relies to the case of *Re Jeremiah Koskei Bowen (Insolvency Cause E038 of 2022) [2023] KEHC 1223 (KLR)*.

The Law

19. On perusal of the record, the applicant filed her petition dated 19th May 2025 but filed submissions on an application dated 21st May 2025 which is not in the court record. Furthermore, the said application, not being in the court file was not placed before the court for hearing or mention of directions. Additionally, the said application was not served to the respondent as the respondent has filed a response to the petition dated 19th May 2025 and made her submissions on the same. Therefore the court shall make its ruling on the petition dated 19th May 2025.
20. The procedure for instituting bankruptcy proceedings by debtors is provided under Section 32 of the *akn ke act 2015 18 Insolvency Act 2015*. It provides:-
1. A debtor may make an application to the court for an order adjudging the debtor bankrupt only on the grounds that the debtor is unable to pay the debtor's debts.
 2. The Court may decline to deal with such an application if it is not accompanied by a statement of the debtor's financial position containing-
 - a. Such particulars of the debtor's creditors and of the debtor's debts and other liabilities and assets as may be prescribed by the insolvency regulations; and
 - b. Such other information as may be so prescribed.
 3. The Court may reject a statement of the debtor's financial position if of the opinion that it is incorrect or incomplete.



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 be 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.
21. The above section allows a party to apply for bankruptcy and sets out the conditions to be met. A publication should be done in a newspaper in circulation within the region. The rationale is to elicit any objection by the creditors. A perusal of the documents annexed reveals that the advertisement was not done, and therefore the applicant has not complied with Section 32(4) of the Act.
22. I have further considered the statement of affairs filed by the applicant and it shows that the only assets she has are her furniture, personal effects and Kshs. 2,000 - which are a total worth of Kshs. 37,000 - while the debt is a total of Kshs. 2,693,650 -, consisting of a judgment against her in Thika CMCC No. 649 of 2018. Notably, a petition of insolvency must be made in good faith and there must be clear proof of actual insolvency.
23. The applicant herein failed to publish a notice of the bankruptcy petition in a newspaper circulating within the region in which she ordinarily resides which is a legal requirement. As such, the petitioner has not complied with Section 32 of the Act. Furthermore, from the proceedings leading to the debt, the applicant has not demonstrated that she is making the instant application in good faith as she entered into a sale agreement with the respondent and received the deposit of the purchase price for the sale of land on the pretense that she was entitled to 5 acres of the said land which was found to be untrue. The statement of assets that includes only furniture is not made in good faith. He who comes to equity must demonstrate honesty and truth to deserve a remedy from a court of law.
24. It is not denied that this petition has not been gazetted and is therefore not properly before the court.
25. It is my considered view that this petition is not in compliance with the requirements as spelt out in Section 32 of the Act rendering it incompetent and misconceived.
26. Consequently, this petition is hereby struck out with costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 20TH DAY OF NOVEMBER 2025.

F. MUCHEMI

JUDGE

