



Bosire v Official Receiver; Weru (Decree holder) (Insolvency Cause E003 of 2025) [2026] KEHC 1171 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1171 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
INSOLVENCY CAUSE E003 OF 2025
RC RUTTO, J
FEBRUARY 5, 2026**

IN THE MATTER OF THE INSOLVENCY ACT, NO. 18 OF 2015

BETWEEN

ERICK BOSIRE PETITIONER

AND

THE OFFICIAL RECEIVER RESPONDENT

AND

MARGINS NJERI WERU DECREE HOLDER

RULING

1. Before this Court is a Notice of Motion dated 31st October 2025, filed by the Creditor/Decree Holder. The Applicant seeks to set aside and vacate the interim orders issued by this Court on 19th May 2025, which stayed the execution of a decree in Kajiado Chief Magistrate’s Court Civil Case No. E041 of 2021.
2. The Petitioner moved this Court by way of a Debtor’s Petition under Section 32 of the *Insolvency Act*, seeking to be adjudged bankrupt on the grounds of inability to pay his debts.
3. The genesis of this matter is an unsatisfied decree for Kshs.754,500/= plus costs and interest, arising from a tenancy and land-related dispute in Kajiado. Under Section 17(3)(b) of the *Insolvency Act*, a debtor is deemed unable to pay a debt if execution issued on a judgment or order of any court has been returned unsatisfied in whole or in part. This failure to satisfy a court decree constitutes an act of bankruptcy, which serves as the jurisdictional trigger for insolvency proceedings.
4. The Petitioner contends that his financial distress necessitates the protection under the bankruptcy regime. He seeks the protection of the Court to allow for an orderly realization and distribution of his assets to all his creditors through a bankruptcy trustee. However, the Creditor argues that the



Petitioner is engaging in forum shopping, noting that two previous applications for stay were declined by the High Court in Kajiado (Mutuku, J.) and the Environment and Land Court (ELC) in Kajiado (Komingoi, J.).

5. The core issue now is whether the High Court, sitting in its insolvency jurisdiction, should maintain a stay of execution against the decree to protect the integrity of the insolvency proceedings.
6. Under Section 423 of the *Insolvency Act*, the High Court is vested with exclusive jurisdiction to supervise insolvency proceedings and matters. While the applicant argues that the underlying debt arises from a tenancy dispute under the ELC's mandate, this Court finds that once a debtor moves the Court under the *Insolvency Act*, the focus shifts from the nature of the debt to the ability and status of the debtor to meet his financial obligations.
7. In addition, the *Insolvency Act* is a detailed legislation that provides for the consolidation of the law relating to insolvency, providing for and regulating the bankruptcy of natural persons; to provide alternative procedures to bankruptcy that will enable the affairs of insolvent natural persons to be managed for the benefit of their creditors and to provide for related and incidental matters. Thus, the *Insolvency Act* is a comprehensive piece of legislation that sets out the procedures for addressing instances where persons face financial distress to the extent that they need statutory intervention towards management of financial affairs for the benefit of creditors. It therefore operates as a complete and self-contained code, including sanctions for individuals who are found to be in breach of its provisions.
8. Under Section 17(3)(b) of the *Insolvency Act*, an unsatisfied execution process is proof of a debtor's inability to pay. The very decree the Applicant seeks to execute and which the petitioner has failed to satisfy wholly or in part is an act of bankruptcy that confers jurisdiction upon this Court to intervene. In my view, at this juncture, it matters not how the debt accrued as the focus is on the existence of a debt.
9. The Applicant relies on the argument that a stay only becomes automatic upon the "commencement" of a bankruptcy order under Section 48. However, the Court possesses inherent and statutory powers under Section 22 and the overriding objective of the *Civil Procedure Act* to issue interim orders that prevent the "ends of justice" from being defeated.
10. Consequently, at this juncture, if this Court were to lift the stay orders, the Decree Holder, as one of the creditors, would proceed to seize assets that, under the scheme of the Act, are intended to vest in the Official Receiver or a Bankruptcy Trustee for the benefit of all creditors. Allowing one creditor to obtain satisfaction through individual execution while a bankruptcy petition is pending would render the subsequent insolvency proceeding nugatory and violate the principle of equitable distribution.
11. This Court notes the Creditor's concerns regarding transparency. However, the *Insolvency Act* provides internal safeguards. If the Petitioner fails to disclose property or conceals assets, he will be subject to the criminal process under Sections 289 to 302, including imprisonment for up to five years or a fine of Kshs.2,000,000/= . These penalties serve as the proper deterrent for misconduct or consequences for any malfeasance, rather than the premature lifting of a stay that would jeopardize the entire estate.
12. Having considered the circumstances of the matter, the statutory objectives of the *Insolvency Act* and the protection of the collective interests of all creditors, I make the following orders:
 - a. The Creditor's Application dated 31st October 2025 is premature and is hereby struck out.
 - b. The interim stay of execution orders issued by this Court on 19th May 2025 shall remain in force pending the hearing and determination of the Insolvency Petition.
 - c. Each party to bear its own costs of this application.



DATED, SIGNED, AND DELIVERED AT MACHAKOS THIS 5TH DAY OF FEBRUARY 2026.

RHODA RUTTO

JUDGE

In the presence of;

.....Petitioner

.....Respondent

Selina Court Assistant

