

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. E1177 OF 2025

**C. B. MWONGELA &
COMPANY ADVOCATES..... ADVOCATE/APPLICANT**

VERSUS

TONY GACHOKA.....CLIENT/RESPONDENT

RULING

1. By a **motion dated 23/09/2025** the Applicant/Advocate seeks an order of stay of proceedings pending proceeding of the Bankruptcy proceedings in **Milimani Bankruptcy Notice No. 1 of 2009** to effect the **Receiving Order issued on 30/10/2009** in respect Tony Gachoka the Respondent herein.
2. The motion is premised under **Section 9, 10 and 11** of the **Bankruptcy Act, Cap 53** and **Order 51 of the Civil Procedure Rules.**
3. The Respondent Tonny Gachoka objects to the motion but did not file responses save for submissions by his Advocate Anne Kaguri & Co. Advocates dated 31/10/2025 and further submissions dated 25/11/2025.

4. The Advocates/Applicant filed **submissions dated 30/10/2025**, which have been considered alongside the affidavit material placed before the court **considered**.

Determination

5. Reasons advanced for the orders sought by the Applicant/Advocate are stated at its face and in the supporting affidavit; that there is a bankruptcy receiving order against Tonny Gachoka/Respondent issued in Milimani Bankruptcy cause No. 1 of 2019; that pursuant to Section II of the Act, all proceedings pending as against the Respondent ought to be stayed.
6. On 25/09/2025, taxation of the Advocate/client Bill of costs dated 5/08/2025 was stayed pending determination of this application.
7. I have perused the order of court issued on 30/1/2009 (ext-**"TG"**) it is an order issued in Bankruptcy Notice No. 1 of 2009 by the Hon. Justice M. K. Koome (as she then was). Order 3 reads that a ***receiving order be and is hereby ordered against the said Anthony Muiruri Gachoka.***
8. I have also seen and perused a Deed on change of name dated 24/05/20206. By the deed, Anthony Gachoka Muiruri as he then was named, changed his name to Tony Gachoka and authorized all persons at all times to describe and address him as Tony Gachoka.

9. The Deed was registered at the Department of Lands Central Registry on 30/05/2006.
10. In this application before me, the Respondent is addressed as Tony Gachoka, former client to Advocates, G. B Mwongela & Co. Advocates.
11. Upon the above, the Client/Respondent has urged that stay of proceedings against him be stayed in line with **Section II of the Bankruptcy Act.**
12. The impugned Bill of Costs dated 5/08/2025, arose from **CMCC No. 1436 of 2015 Kwacha Group of Companies Ltd & 2 Others v. Sam Schoiler & 6 Others.**
13. **Section II of the Bankruptcy Act** provides:-

Power to stay pending proceedings

II (1) The court may, at any time after the presentation of a bankruptcy petition stay any action, execution or other legal process against the property or person of the debtor and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

(2) Where the court makes an order staying any action or proceeding, generally, the order may be served.....

14. It is well understood that the Bankruptcy Act was repealed and replaced with the **Insolvency Act 2015 Laws of Kenya**.

Section 733 thereof confers orders and proceedings made under the repealed Bankruptcy Act as a presence of the law and for administration of the person under protection for administration of the Official Receiver in accordance with the law.

15. The Applicant states that the receiving order made on 30/10/2009 as aforesaid is still in force, and he has not been discharged to date.

16. I have perused a ruling in JR application vide **Hc. J. R. Misc. 58/2018 – C. B. Mwangela & Co. Advocates V Tony Gachoka** dated 19/11/2025 (Aburili J). Tony Gachoka therein sought orders of stay of judgment issued on 3/08/2022 and or consequential proceedings pending Bankruptcy proceedings in Notice No. 1 of 2009. (Earlier cited in the instant proceedings).

17. At the end, the court made a finding that the receiving order issued on 30/10/2009 against Tony Gachoka continues to subsist under **Section 733** of the **Insolvency Act, 2015**; that the Respondent is entitled to protection of the said order; including immunity from execution proceedings as long as he remains undischarged from the bankruptcy; and the court proceeded to stay all execution proceedings.

18. **Borrowing from the ruling of Aburili J, and juxtaposing it to the motion before this Court, I am persuaded that the motion brought by the Client/Respondent dated 23/09/2025 is merited.**

There being no reason provided to find otherwise, prayer 2 and 3 thereof are allowed. All execution proceedings against the Applicant, Tony Gachoka are hereby stayed; pending the proceedings of the bankruptcy in Milimani bankruptcy Notice no. 1 of 2009 and the receiving order issued on 30/10/2009 are stayed.

Orders according,

Delivered Dated and Signed at Nairobi this 12th March, 2026.

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JANET MULWA.

JUDGE