



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Bhadreshkumar Jagdishchandra Vyas (Debtor) (Insolvency Petition  
E002 of 2023) [2025] KEHC 535 (KLR) (27 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 535 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
INSOLVENCY PETITION E002 OF 2023  
PN GICHOHI, J  
JANUARY 27, 2025  
IN THE MATTER OF THE INSOLVENCY ACT, 2015  
AND  
IN THE MATTER OF BHADRESHKUMAR JAGDISHCHANDRA VYAS (DEBTOR)**

**JUDGMENT**

1. Before this Court is the Petition dated 13<sup>th</sup> September, 2023 and filed on 26<sup>th</sup> September, 2023 by Bhadreshkumar Jagdishchandra Vyas (Petitioner/Debtor) seeking a bankruptcy order against himself and his estate. The Petition is supported by his affidavit sworn on 13<sup>th</sup> September, 2023 and is also accompanied by the Official Receiver's Certificate of Compliance dated 22<sup>nd</sup> September, 2023.
2. The Petitioner deponed that he is aged 50 years and married to Swatiben Bhadreshkumar Vyas. He states that on 4<sup>th</sup> July, 2015, he, together with 4 other persons, registered a company called Naish Supplies Limited where every director was holding 20% shares and that each share was valued at Kshs 1,000.
3. He states that the subject company was engaged in the business of procuring and sale of hardware/building materials until around November, 2017 when the company was unable to service the debts owing to its suppliers and from January 2018, the other Four (4) Directors fled the country and went back to India which is their country of origin.
4. It is his statement that since he was the only Director left in the county, he was arrested and charged at the Kisumu Law Courts with the offence of obtaining goods by false pretences contrary to Section 313 of the Penal Code. The basis of the criminal case being respect to supply of hardware steel goods valued at Kshs. 1,595,950/= which were given to Naish Supplies Limited vide Invoice No. NBO6023 dated 12<sup>th</sup> August, 2016.
5. He states that on account of the harassment, intimidation and being threatened with criminal conviction over a debt that was incurred by Naish Supplies Limited, he bowed to pressure and issued 29 personal cheques of Kshs 70,000/= each, towards settlement of the debt of Kshs 2,030,000/= owed



to Jubilee Jumbo Hardware Ltd. Consequently, the criminal case in Kisumu was marked as withdrawn under section 204 of the *Criminal Procedure Code*.

6. The Petitioner states that out of the 29 cheques, only 7 were honoured. The rest were returned for lack of funds. He elaborates how he was taken ill during that period. Having used the money for medical expenses, the money in his account was insufficient. He therefore instructed his Bank, Equity Bank Limited to stop payment of the 22 cheques and also instructed his advocates Kanyi Ngure & Co. Advocates to write to Jubilee Jumbo Hardware Limited not to bank the remaining Twenty-Two (22) cheques on account of insufficient funds and physical ailment.
7. He states that his ailment occurred while in India on 18<sup>th</sup> February, 2019 when he was involved in a motor cycle accident which occasioned the fracture of his left femur which made him unable to engage in any long hour duties, either while standing or seated due to recurrent pains and the degree of permanent disability was marked at 70%. Further, there were anticipated future medical expenses of about Kshs. 300,000 to remove the plate implants which he is unable to raise .
8. He further states that he does not have any money or assets and therefore, he instructed a firm of Kibois Kosgei and Associates Certified Public Accountants and they prepared his financial statements report dated 25<sup>th</sup> May, 2023 for year 2018 & 2019 showing that his finances have been in the red from the year 2018 to 2019 onwards.
9. He states that he owes Jubilee Jumbo Hardware limited Kshs.1,480,630/= inclusive of interest but he is not in a financial position to pay and he is apprehensive that fresh criminal charges and/or civil proceedings to recover their debt will be instituted against him yet he has no assets to settle his debts reason being that he is currently fully depending on the goodwill of his friends and his wife's paltry income derived from employment at Nakuru Wool Mat shop Ltd.
10. The Petitioner depones that his wife's salary goes towards the family upkeep and to educate their 17-year-old second born daughter Dhrumi Bhadresh Vyas who is currently a form six (6) level student at Melvin Jones. He states that his 22 years old first-born daughter Kruti Bhadresh Vyas is currently living with his wife's relatives in the United Kingdom.
11. During the hearing of the petition, he adopted the contents of the Petition and the Affidavit. He emphasised that the accident in 2019 in Gujarat India when a motor cycle hit him and he sustained injuries on the hips and back. A metal plate was fixed on his hip but it affects his back such that he is unable to work.
12. He told that Court that he is required to pay Ksh.300,000/= for operation but he cannot afford it and neither can he afford Ksh.150,000/= required if he is to do it in India. He explained that even though he has personal bank accounts in Prime Bank, Equity Bank and DTD Bank, there is no money in those accounts and he closed between year 2018 -2019.
13. He explained that his wife Swaeiben works as Operations Manager at Nakuru Wool Shop where she earns about Ksh.60,000/= per month but she cannot support him to pay the debt since she is the sole bread winner for the family including payment of fees, bills and his medication.
14. He adopted documents filed in court and prayed to be declared bankrupt as he cannot pay the debt.
15. The petition herein was served upon Jubilee Jumbo Hardware Limited, creditor, via the email address jumbo@jubileegroup.org on 27<sup>th</sup> November, 2023 and a physical copy served on its manager, one Mr. Pratul on 28<sup>th</sup> November, 2023 as per the Affidavit of service sworn on 30<sup>th</sup> November, 2023 by Manuel Sakayo Markey, a licensed process server.



16. The Petitioner states that a Notice to Creditors was advertised in the Standard Newspaper of 12<sup>th</sup> March, 2024. Subsequently, a mention notice and a hearing notice was served upon the creditor, Jubilee Jumbo Hardware Limited but no response was received as such the Application proceeded undefended.

### **Petitioner/debtor's Submissions**

17. His submissions are on one main issue; whether the petition has met the legal threshold so as to be allowed as sought. While emphasising the contents of the petition, the Affidavit in support, the annexures and his testimony before this Court, he argued that Bankruptcy Procedures are meant to grant shelter and a fresh start to individual debtors who are overburdened by debts .
18. He submitted that in compliance with procedure, he was issued with a Certificate of Compliance by the Official Receiver dated 22<sup>nd</sup> September, 2023 before filling the Petition on 26<sup>th</sup> September 2023.
19. Further, he submitted that he also filed an application accompanying the Petition seeking that the Court appoints a Bankruptcy Trustee/Supervisor to manage the Petitioner's property and after filling the Petition, he had the Petition advertised in the Standard Newspaper of 12<sup>th</sup> March, 2024.
20. He submitted that in addition, he has attached the Report of his financial statement which showed that he was on the red from the year 2019. He therefore submitted that the Application is merited.
21. In support of his case, he relied on the petition of *Re Jane Kabura* [2018] eKLR where High Court held:-

“As required by Law the Bankruptcy proceedings were advertised in the Daily Nation of 17<sup>th</sup> April 2018. The Notice was in the page that carries classified advertisements. Advertisement is on small size. While I would say no more on it, I would think that in future there should be clear directions as to the size of the Advertisement. Surely, it must be prominent enough to catch the attention of interested Parties (who would include Creditors). Anyhow, no Creditor came forward and on the hearing day of 12<sup>th</sup> October 2018, only Kabura was in Court. She sought the Orders in the Petition. A Debtor, like Kabura, is entitled to apply to be adjudged bankrupt on the grounds that the Debtor is unable to pay his or her Debts (Section 32(1) of The *Insolvency Act*). Kabura has filed a Statement of her financial position. I have no reason to disbelieve it. She seems unable to pay her debts and is deserving of the Orders sought.”

22. The Petitioner also relied on the case of *Re Jitesh Dhirajal Malde (A Debtor)* [2021] eKLR where the Court thus:-

“In my view and on the basis of the evidence, I find that there is sufficient evidence that the Petitioner is unable to pay his debts. As stated before, it is trite that in order for a debtor to be shielded through a bankruptcy order, the petition must be made in good faith and there should be no material nondisclosure. I do not find any reason to conclude that there has been material non-disclosure... From the totality of the evidence, I am satisfied that the Debtor is unable to pay his debts. I do not find any compelling reason to deny the order of bankruptcy against the Petitioner.”

23. Lastly he cited the Petition of *Re James Mwangi Nderitu t/a Jajo Enterprises (a debtor)* [2020] eKLR, where the Petitioner/Debtor was found unable to pay his debts in similar circumstances and the Court allowed the Petition to be adjudged bankrupt.



## Determination

24. After considering the petition, Affidavit in support, the Petitioner's testimony and his submissions, the issue for determination is whether this petition should be granted.
25. As per *Insolvency Act* and its *regulations* of 2016, the twin goals of consumer or individual bankruptcy law are to protect creditors and ensure optimal payment to them where possible; and the provision of shelter and a "fresh start" to individual debtors overburdened by debt.
26. As rightly put by Counsel for the Petitioner Bankruptcy procedures as per the *Insolvency Act* and its *regulations* of 2016, are to provide shelter and a "fresh start" to individual debtors overburdened by debt. However, they also aim at protecting creditors and ensure optimal payment to them where possible.
27. For an individual seeking bankruptcy protection, he has to scrupulously demonstrate that he is acting in good faith and disclose all his financial information. It is upon meeting this threshold that a Petitioner can become entitled to a bankruptcy order.
28. Under section 32 of the *Insolvency Act*, 2015, a debtor is entitled to apply to be adjudged bankrupt on the grounds that he or she is unable to pay his or her debts.
29. In this case, the Petitioner has clearly explained how the debt was acquired by Naish Supplies Limited, in which he was one of the Directors, took supplies from Jubilee Jumbo Hardware and being unable to pay the said money, the other directors left the county for India leaving him to shoulder the burden of the debt accruing to the said Company.
30. Due to none- payment of the debt owed by the Company , he was at one point arrested with the offense obtaining by false pretence and in order to discharge himself from the criminal proceedings, he attempted paying for the said debt acquired by the company but was unable to complete the same leaving a balance of Kshs. 1,480,630, which he cannot pay because he no longer has any source of income, neither does he have any assets to sell in order to offset the said debt.
31. In further compliance with the Act, he attached to the petition, his financial statement prepared by certified Public Accountants, Kibois Kosgei and Associates showing that the estimated value of his Estate as Kshs 18,200/= made up of his personal effect, cash at hand, mobile phone and a watch. His liabilities stood at Kshs 1,480,630.
32. In further compliance, it is also on record that the petition herein was served upon the main Creditor Jubilee Jumbo Hardware Limited and then advertised in the Standard newspaper of 12<sup>th</sup> March, 2024. However, no creditor filed any response to the Petition herein. As earlier stated, the matter proceeded as undefended.
33. Having considered the totality of the evidence before this Court, it is clear that the Petitioner has not only fully complied with Section 32 of the *Insolvency Act* in regard to law relating to procedures towards application for an order to be adjudged bankrupt, but has also demonstrated that he is unable to pay his debts.
34. There is no reason to deny the orders sought. In the circumstances, petition dated 13<sup>th</sup> September, 2023 is allowed in that following orders are issued:-
  1. Bhadreshkumar Jagdishchandra Vyas (Petitioner) be and is hereby adjudged bankrupt and a bankruptcy order is made against his estate.



2. The Official Receiver (or a person nominated by the Official Receiver) is hereby appointed to be the Bankruptcy Trustee in respect of the Petitioner's Property.
3. Cost of the petition shall be borne out of the Petitioner's estate.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 27<sup>TH</sup> DAY OF JANUARY, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

Mr. Kanyi Ngure for Petitioner

N/A for Respondent

Ruto, Court Assistant present

