



**In re Kirteekumar Babubhai Patel (Debtor) (Commercial Case E026 of 2023)
[2025] KEHC 5185 (KLR) (Commercial and Tax) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

COMMERCIAL CASE E026 OF 2023

JWW MONG'ARE, J

APRIL 28, 2025

IN THE MATTER OF KIRTEEKUMAR BABUBHAI PATEL(DEBTOR)

BETWEEN

KIRTEEKUMAR BABUBHAI PATEL APPLICANT

AND

OFFICE OF THE OFFICIAL RECEIVER RESPONDENT

JUDGMENT

1. By a petition dated 14th June 2023, the Applicant has moved this Honourable court seeking to be adjudged bankrupt. The petition was advertised on 17th April 2024 and one of his Creditors, Mr. Umkant J M Dave listed in schedule of Creditors as Creditor number one filed a replying affidavit in opposition to the said petition. Parties were thereafter directed to put in written submissions.
2. It is the Petitioner's case that together with his late wife, Manu Kirtee Patel, they operated a company known as Green Cross Pharmaceuticals and medical Services which they were forced to close in 2020 during the covid pandemic and which business contributed greatly to his financial woes. The Petitioner is currently indebted to the tune of Kshs.26,606,644/= in secured loans from Guardian Bank and Huduma Sacco and has an unsecured personal loan which together with interest from DTB Bank stands at Kshs.7,140,857.55/= as at 20th August 2024. In addition, the Petitioner states that he was sued in MCCC No. 6343 of 2017 and judgement for the sum of Kshs.5,577,388/= was issued against him which remains unsettled to date.
3. The Petitioner had prior to filing the present petition filed a Bankruptcy/Insolvency Cause No. E002 of 2019 which was later withdrawn to allow him enter into arrangements with his Creditors but the situation deteriorated before he could do so, leaving him without an alternative but to file the present Petitioner. He urges the court to find merit in his petition and allow the same.



4. Umkant J. M. Dave opposed the petition for bankruptcy through a Replying affidavit sworn on 4th July 2024. He stated that he was listed in the schedule of Creditors as Creditor number one. In opposing the Petitioner for bankruptcy, he alleges that the Petitioner, in claiming that he is unable to meet his financial obligations, has failed to disclose that he is a consultant surgeon and works for gain as such at MP Shah hospital and that from the Bank statement he has been receiving payments in his account at Bank of Baroda where his account was credited with the sum of Kshs.977,252/= for the period between 1st July 2023 and 26th June 2024. He avers that it is highly unlikely for a surgeon who has worked for that period of time not to have acquired any assets capable being disposed to offset his indebtedness. The Creditor has urged the court to dismiss the petition since the same is being used by the Petitioner to escape his financial obligations, including his debt which arose from a friendly loan he advanced to the Petitioner.
5. As properly stated by the Creditor in his submissions, while citing the courts holding in the James Maina Kabatha(Debtor/Applicant) (2020) eKLR, the fundamental goal of bankruptcy as a law is that it is “intended to give honest but unfortunate debtors a new opportunity in life and a clean field for future effort unhampered by the pressure and discouragement of pre-existing debt”.
6. In addition to the above decision I am further guided by the matter of Stephen Nyaega Mose (2018) eKLR, on the purpose of Bankruptcy Laws. Wherein it was stated as follows:

“Bankruptcy laws were never meant to protect people like the debtor herein, who are in debt because of their own act of fraud or professional misconduct; but are meant to protect genuine people who have unfortunately found themselves in debt out of innocent factors such as harsh business environment and unavoidable business calamities, but not fraudsters. The aim is to give such people a fresh start in life to enable them “get back to their feet and soldier on in life”.
7. Under section 32(1) of the *Insolvency Act*, a debtor is entitled to apply to be adjudged bankrupt on grounds that he or she is unable to pay their debts. In the present case before this court, the Petitioner admits to being a retired consultant surgeon who from time to time may get some consultancy work and from which payment he derives some income for subsistence. From the said affidavit, he has deponed that three motor vehicles owned by him have already been attached and sold off by various Creditors but he still remains indebted to the Creditor Number 1(Mr. Ashok) among other Creditors, which include banks and financial institutions. Although the Creditor depones that the Petitioner has a son who is doctor, I find that it would be unfair to the son to order that he settles his father’s debt to escape bankruptcy.
8. Having said so, I have carefully considered the pleadings as filed by the Petitioner. I am satisfied that he has demonstrated incapacity from his current status to genuinely address the debts as demonstrated in the affidavit filed herein. He has established that his woes were exacerbated by his involvement in the Green Cross Pharmaceuticals and Medical Services which ran aground during the covid pandemic period and not through acts of dishonesty geared at escaping his financial obligations, as alleged by the Creditor. While I empathize with the Creditor who holds a decree from a case against the Petitioner, I am satisfied that the Petitioner has demonstrated that he has no other assets capable of being disposed off to help settle his indebtedness. The Creditor has also not brought any material to the court to demonstrate that the Petitioner has deliberately misled the court and is hiding valuable assets that can be disposed off and the proceeds applied to offset some if not all his debts.



Conclusion and Disposition

9. In the foregoing, I now issue the following final orders:

1. The petition filed on 14th June 2023, is allowed.
2. Kirteekumar Babubhai Patel be and is hereby adjudged bankrupt and a bankruptcy order is made against his estate.
3. The official receiver is hereby appointed to be the Bankruptcy Trustee in respect of the debtor's property.
4. The costs of the Petition should be borne out of the Debtor's estate.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF APRIL 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Ms. Kirui for the Petitioner/Debtor.
2. Mr. Masinde for the Respondent/Creditor No. 1.
3. Amos- Court Assistant

