



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Wangai v Equity Bank & 7 others (Insolvency Cause E001 of 2023)
[2025] KEHC 6905 (KLR) (Civ) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6905 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
INSOLVENCY CAUSE E001 OF 2023**

KW KIARIE, J

MAY 28, 2025

BETWEEN

DAVID MAINA WANGAI PETITIONER

AND

EQUITY BANK 1ST CREDITOR

KENYA COMMERCIAL BANK 2ND CREDITOR

CO-OPERATIVE BANK 3RD CREDITOR

FAMILY BANK KENYA 4TH CREDITOR

NCBA BANK 5TH CREDITOR

TOWER SACCO 6TH CREDITOR

MUKI SACCO 7TH CREDITOR

TALA 8TH CREDITOR

JUDGMENT

1. David Maina Wangai filed a petition dated August 27, 2019, seeking a bankruptcy order against himself and his estate. This petition is supported by his affidavit sworn on December 18, 2023 and his statement of affairs. The petition is premised on the following grounds:
 - a. The petitioner is a carpenter by profession, was trading using HouseFeat Traders Limited company in running a mini-supermarket and sale of furniture in Olkalou at Jua-Kali junction before the said business was demolished on 14th February 2021 by the Kenya Railway Corporation.



- b. His financial struggles started with the advent of the COVID-19 pandemic, and they were later compounded by demolitions by the Kenya Railway Corporation carried out on February 14, 2021.
- c. The mini supermarket and furniture business were adversely affected by COVID-19. In a regrettable event, the said business was located in one of the areas claimed by the Kenya Railway Corporation at Jua Kali junction, and it was adversely affected by the said demolitions.
- d. He had to relocate his business to the Jua Kali Area next to Shell Petrol Station, opposite NCPB Gate B, within Olkalou town. The business has not done as well as it was at Jua-Kali junction, and since then, he has been struggling to meet my loan obligations despite restructuring my loans to avoid default.
- e. That when the two unfortunate events occurred, he had loan facilities in various lending institutions, and at the moment, the outstanding loans at the underlisted institutions are as follows: -

Equity Bank-.....	Kshs. 927,000.00
KCB.....	Kshs. 73,117.58
Cooperative Bank.....	Kshs. 48,945.33
Family Bank	Kshs. 60,263.95
NCBA	Kshs. 37,432.54
Tower Sacco.....	Kshs. 268,779.36
Muki Sacco.....	Kshs. 589,937.00
Tala	Kshs. 45,000.00
KRA Tax Obligation for House feat Ltd.....	Kshs. 40,000.00
Total	Kshs. 2,090,475.76

- f. Due to the unfortunate events, he cannot meet his loan obligations from the said institutions, and he has been adversely listed with the Credit Reference Bureau.
 - g.) He now owes over Kenyan Shillings Two Million Ninety Thousand Four Hundred and Seventy-Five (2,090,475.76/=) to various lending institutions and the Kenya Revenue Authority, and despite his efforts, he is unable to pay them.
 - h. Through this petition, the petitioner seeks protection from his creditors. He is currently unable to service his loan facilities from various lenders, and outstanding loans continue to accrue interest.
2. The first, third, and fifth respondents did not participate in the proceedings despite being served.
 3. The 2nd respondent opposed the petition on the following grounds:
 - a. The petition falls short of the law's requirements, specifically the provisions of section 32 (4) and 34(5) of the *Insolvency Act* 2015 and Regulation 18(4) of the Insolvency Regulations.
 - b. The statement of affairs elucidated by the petitioner may not reflect the petitioner's actual financial position but only aims to deny creditors the opportunity to recover and realize their debts.



- c. That on diverse dates, the 2nd creditor/respondent advanced to the petitioner a credit card facility loan on his Credit Card Number: 4174 8220 0062 0169 and subsequently mobile loans where the aforesaid loan facilities have since run into arrears up to a tune of Kshs. 21,105.28/= and Kshs. Kshs. 53,017.35/= respectively and making an aggregate amount of Kshs. 74,122.64/= as at 2nd October 2024.
 - d. Due to the ongoing default in repaying the aforementioned loans, the petitioner has been listed with the Credit Reference Bureau.
 - e. The above loan facilities were duly granted to the petitioner upon request, and the petitioner executed all relevant documentation voluntarily and with full knowledge of the terms and conditions therein.
 - f. The law under Section 32(3) of the *Insolvency Act* gives the court the power to reject a statement of the Debtor's financial position if it is incorrect in the court's opinion.
 - g. The statement of affairs elucidated by the petitioner herein may not reflect the true financial position of the petitioner, but is only aimed at denying the creditors the efforts to recover and realize their debts.
4. Family Bank Kenya Limited, the 4th Creditor, opposed the petition on the following grounds:
- a. The instant petition is misconceived, frivolous, vexatious, lacks merit, and is a diversionary tactic and a waste of the court's time.
 - b. The instant petition is not merited, as the debtor seeks to turn this court into his haven after failing to discharge his obligation to repay loans that have fallen due.
 - c. The petition is premature because no full and thorough investigations of the petitioner's financial dealings during and before the filing of the petition have been tendered.
 - d. The statement of affairs presented by the petitioner is incomplete as it is not accompanied by documents in support thereof.
 - e. That while the petitioner purports to have loans facilities in 8 lending institutions, the only documentation or statement of loan proffered before this Honourable Court is from 3 lending institutions namely Muki Sacco, Tower Sacco and Equity Bank. The remaining loans are mere speculations and/or conjecture with nothing whatsoever presented as proof and the entire Petition therefore fails on this account.
 - f. That furthermore, the loan statements availed, being from Muki Sacco, Tower Sacco and Equity Bank, are not in tandem with the allegations in the Petition. The Petitioner has chosen to exaggerate the loan balances with a view of misleading this Honourable Court. For instance, in the statement from Muki Sacco, the Petitioner, in his Petition, makes reference to the loan balance as at 21st December 2021 yet substantial payments have been made since then, a period of over 2 and a half years.
 - g. That similarly, the account statements from Equity Bank and Tower Sacco talk of different figures from the vastly exaggerated figures contained in the petition, and as such, the petitioner has sought to mislead this honourable court.
 - h. That the documentation from the Credit Reference Bureau (CRB) does not in any way provide conclusive evidence of the allegations by the Petitioner. In any case, the petitioner's listing before the CRB was done on 18th December 2023, 2 days before filing the instant



petition and only serves to draw suspicion. Further, the CRB report has no relation whatsoever with the purported indebtedness or the particulars of loan items alleged in the petition.

- i. That the instant petition and bankruptcy proceedings herein fails for want of material disclosure as the petitioner has willfully failed to disclose all bank accounts and assets owned by him.
 - j. That further, the petitioner has failed to annex all loan facility documents to fully and effectively prove his indebtedness.
 - k. That the petitioner has approached this honourable court with unclean hands, intending to deceive the court, and the petition in its entirety remains unsubstantiated, and as such, the honourable court cannot grant orders to a deceiving party with unclean hands.
 - l. That the petition is only meant and calculated to deny the 4th respondent the fruits of their sweat and to insulate the petitioner from paying his debts.
 - m. That as per Regulation 18(4) of the Insolvency Regulations, in addition to publication of a notice in a newspaper of regional publication under Section 32(4) of the *Insolvency Act*, the petitioner is also required to arrange for publication of his statement of Financial Position in the Kenya Gazette which has not been done and as such the petition fails for want of conformity with the law and the court cannot shut its eyes to such a grave failure to comply with the law.
 - n. That the instant petition and bankruptcy proceedings are being used by the debtor to game the system and evade paying his debts in circumstances in which he can pay.
 - o. That the mere inability to pay a debt ought not be taken summarily out of its context, for it may be consistent with a state merely of temporary financial embarrassment.
 - p. That the petition fails for want of credible evidence in support of the petitioner's allegations.
 - q. That in the circumstances, the petition dated 18th December 2023 is a monumental procedural and substantive legal nullity, fatally and irredeemably incompetent, an abuse of the court process, frivolous, vexatious, mischievous and a proper candidate for dismissal and or striking out with costs to the 4th respondent.
5. The 6th respondent averred that upon the petitioner's failure to honour his loan obligation, the outstanding balance was deducted from the guarantors' accounts as agreed. The loan was marked as fully serviced.
6. Bankruptcy protection is an extraordinary relief that safeguards creditors and ensures optimal payments when possible. It also offers shelter and a fresh start to individual debtors who are overburdened by debt. This was explicitly explained in re James Maina Kabatha (Debtor/Applicant) NKR Insolvency Cause No. 4 of 2019 [2020] eKLR, Prof. Ngugi (as he then was) said:
3. The "fresh start" goal is accomplished through the bankruptcy discharge, which usually releases the debtor from personal liability from certain debts and prevents creditors from taking any action against the debtor to collect those debts.
 4. Consequently, bankruptcy protection being an extraordinary relief, one of the corollaries to the these seemingly conflictual twin goals of bankruptcy law – the protection of creditors and the provision of fresh start for the honest



but unfortunate debtor -- is that an individual seeking bankruptcy protection is required to scrupulously demonstrate that he is acting in good faith and disclose all his financial information.

5. It is only upon meeting this double threshold – demonstration of good faith and full disclosure of all financial information – that a Petitioner can become entitled to a bankruptcy order. The architecture and structure of the *Insolvency Act* and Insolvency Regulations, 2018 reinforce these double threshold for individual Petitioners.
7. The second respondent argued that the petition has not complied with sections 32 (4) and 34(5) of the *Insolvency Act* 2015 and Regulation 18(4) of the Insolvency Regulations.
8. Section 32 (4) and (5) of the *Insolvency Act* provides:

(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 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.

9. The petitioner has not demonstrated that he has complied with the requirements of subsection (4) quoted hereinabove. However, this defect is cured by section 696 (1) of the Act, if no party suffers any prejudice. The section provides:

A proceeding under this Act may not be invalidated or set aside for a defect in a step that is required to be taken as part of, or in connection with, the proceeding, unless a person is detrimentally affected by the defect.

10. The petitioner admitted that he did not comply with the requirement for advertisement. In the matter of Ali Jillo Fallan (Insolvency Cause 6 of 2018) [2021] KEHC 8 (KLR) (Commercial and Tax) Mativo J. (as he then was) stated:

35. Additionally, Regulation 18 (4) requires the debtor to sign and date the 'statement of the debtor's financial position and arrange for the publication of the statement in the Kenya Gazette. The Petitioner only annexed a newspaper advertisement. There is nothing to show that the Petition was Gazetted in the Kenya Gazette as the law requires. Insolvency proceedings are class actions by their very nature. This is the reason why the proceedings are advertised in newspapers and the Kenya Gazette. The advertisement affords creditors the opportunity to come forward to either oppose or support the Petition. The Petitioner was required under the law to comply with the regulation and Gazette the Petition. He did not. On the foregoing grounds, the competence of the Petition for want of conformity with the rules is questionable. The court



cannot shut its eyes to such a grave failure to comply with the law. The court cannot entertain a practice which has the potential of causing injustice.

11. In *Bowen v M Oriental Bank & 8 others* (Insolvency Cause 1 of 2019) [2022] KEHC 11212 (KLR), where there was a similar noncompliance, E. K. Ogola J. struck out the petition. In the instant case, the petition will suffer the same fate. Each party will bear its costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 28TH DAY OF MAY 2025

KIARIE WAWERU KIARIE

JUDGE

