



REPUBLIC OF KENYA



KENYA LAW
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**John v Oyoo (Insolvency Cause E032 of 2024) [2025] KEHC 11449 (KLR)
(Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11449 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E032 OF 2024**

PM MULWA, J

JULY 31, 2025

BETWEEN

DEBORAH MBULA JOHN PETITIONER

AND

ELLY OYOO RESPONDENT

RULING

1. By a Notice of Motion dated 17th October 2024, the applicant, Deborah, seeks a stay of proceedings and stay of execution of the decree issued in Milimani Magistrate Court Civil Case No. 1529 of 2019. She further seeks leave of the court to publish the bankruptcy petition filed herein in a newspaper with a nationwide circulation. The application has been brought under the provisions of Sections 32 and 33 of the *Insolvency Act*.
2. The trial court had condemned the applicant jointly with another to pay a sum of KShs. 11,501,762.41. In execution of the decree, the applicant was committed to civil jail but was subsequently released. The Decree-Holder seeks to review the ruling releasing her from prison, which application poses an imminent threat to the execution of the decree
3. This is what the applicant seeks to stay. Her case is that she has suffered financial and emotional loss from the loss of her business, marriage break-up and constant hospital visits and that with no employment, she has no finances to settle the debt, and she preferred the bankruptcy petition.
4. The application is opposed through the replying affidavit of Elly Oyoo, sworn on 11th December 2024. He deposes that the application is frivolous, incompetent, and an abuse of the court process. He notes that in a previous application dated 3rd September 2024, the applicant indicated a willingness to settle the decretal amount and proposed a payment plan. However, upon her release from civil jail, she filed the present bankruptcy petition. He further avers that the applicant is not truthful in her disclosures,



having failed to provide a comprehensive list of her assets and liabilities. In particular, it is alleged that she owns motor vehicles which can be used to satisfy the decree. It is also deponed that the debt in question arose from a contract valued at Kshs. 144,775,000.00 entered into between the Applicant and the County Government of Kitui, yet she has not disclosed the amount received under that contract.

5. Following the filing of the application, this Court granted interim relief and directed that the petitioner's bankruptcy petition be published in a newspaper with nationwide circulation.
6. The application was canvassed by way of written submissions, which I have duly considered alongside the pleadings and supporting affidavits. The sole issue for determination is whether the applicant is deserving of an order for stay of execution in Milimani Chief Magistrate's Civil Case No. 1529 of 2019, in view of the pending bankruptcy petition.
7. The power to grant a stay of execution or stay of proceedings is discretionary and must be exercised judiciously and in accordance with the principles of justice, equity, and the overall objectives of the Insolvency Act. Section 32 of the Act recognizes the right of a debtor who is unable to pay their debts to seek relief through a bankruptcy petition. In tandem, Section 23(2) of the Insolvency Act provides as follows:

If it is proved to the issuing court that an application for a bankruptcy order in respect of the debtor has been made to the High Court, that court may either—

- a. stay the execution process on such terms as it considers appropriate; or
 - b. permit the execution process to continue on such terms as it considers appropriate.
8. From the material placed before this Court, it is not disputed that a debtor's petition has been duly filed. It is equally not in dispute that there is a valid judgment and decree against the applicant, with the threat of execution looming. At this stage, the Court is not called upon to determine the merits of the bankruptcy petition. The question before the Court is whether the circumstances presented warrant the grant of a stay to allow the petition to proceed in an orderly and meaningful manner.
 9. I also note the provisions of Section 48 of the Insolvency Act, which stipulate that once a bankruptcy order is made, all individual legal proceedings against the bankrupt in relation to the debts are stayed. It follows that the intention of the law is to preserve the estate of the debtor for the collective benefit of creditors, and to prevent piecemeal or prejudicial execution by individual creditors.
 10. In light of the above and considering the Applicant's demonstrated financial distress, the filing of a debtor's petition, and the need to prevent conflicting proceedings, I am satisfied that the Applicant has met the threshold for the grant of a temporary stay.

Disposition

11. Accordingly, I find merit in the Notice of Motion dated 17th October 2024. It is hereby ordered that:
 - i. There be a stay of execution of the decree issued in Milimani Chief Magistrate's Civil Case No. 1529 of 2019 pending the hearing and determination of the bankruptcy petition filed herein;
 - ii. Costs of this application shall be in the cause.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY 2025.



PETER M. MULWA

JUDGE

In the presence of:

Mr. Lwanga for Petitioner/Decree holder

Ms. Masheti h/b for Mr. Ndolo for Respondent

Court Assistant: Carlos

