



**Muchugia (Commercial Case E026 of 2024) [2025] KEHC 11731 (KLR)
(Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11731 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E026 OF 2024
MN MWANGI, J
JULY 31, 2025**

**IN THE MATTER OF
ANTHONY MUCHUGIA PETITIONER**

RULING

1. This ruling is in respect to the petitioner's Notice of Motion application dated 4th September 2024 filed under the provisions of the *Insolvency Act* and all other enabling provisions of the laws of Kenya. The petitioner seeks an order for stay of execution of the Judgment and decree issued by the Small Claims Court at Milimani in Small Claims Case No. E5398 of 2022, and all consequential orders arising therefrom, pending the hearing and determination of this Bankruptcy Petition.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Anthony Muchugia, the petitioner herein. Mr. Muchugia averred that he has filed a bankruptcy petition as he is financially insolvent. He deposed that his business is in serious distress and he is unable to settle the decretal sum of Kshs.1,000,000/= awarded against him in Small Claims Case No. E5398 of 2022 at the Milimani Small Claims Court. He contended that warrants of arrest have since been issued against him and he has only managed to pay Kshs.170,000/= towards settlement of the decretal sum. Mr. Muchugia urged this Court to grant the reliefs sought in his application, asserting that it would be in the interest of justice to do so since he has completely exhausted his financial resources.
3. Pursuant to the directions given by this Court, the petitioner filed two further supporting affidavits sworn on 25th September 2024 & 4th December 2024. In the said affidavits sworn by himself. He averred that he has since filed a valid bankruptcy petition, but the Small Claims Court declined to grant him additional time and instead issued a warrant of arrest against him, which is still in effect. He stated that as a result of the same, he now lives in constant fear of arrest, which has adversely impacted his health and overall well-being. Mr. Muchugia averred that enforcement of the aforesaid warrant would render the bankruptcy petition futile. He reaffirmed his commitment to settling his debts within the



next 12 months and stated that the grant of a stay of execution would provide him with a chance to regain financial stability.

4. From the Court record, it is evident that when Mr. Wahome, learned Counsel for the petitioner appeared before me on 27th March 2025, I observed that the instant application had not been served upon the decree holder, who has a right to respond to it. In adherence to the principles of natural justice, I directed the petitioner's Advocate to serve the application herein on the decree holder by close of business on 22nd April 2025, and I granted the decree holder 14 days to file a response thereto. The judgment debtor would have 14 days from the date of service of the response to file and serve a third further affidavit, if need be, together with written submissions. Once served, the decree holder would be required to file and serve his written submissions.
5. Upon reviewing the Case Tracking System (CTS), it is evident that as at the time of writing this Ruling, the decree holder in Small Claims Case No. E5398 of 2022 had not filed any response to the application herein. Notably, on 24th April 2025, the petitioner filed an affidavit of service sworn on the same date by Mr. Luis Wahome, Advocate of the High Court of Kenya and Counsel for the petitioner. In the said affidavit, Mr. Wahome deposed that on 22nd April 2025 at approximately 6:00 p.m., he sent two emails to DLO Advocates LLP, who act for Mr. Paul Mburu, the decree holder. He stated that the first email contained the instant application and all relevant annexures, along with a notification of the Court's directives and the mention date scheduled for 11th July 2025 and in the second email, he forwarded a copy of the petitioner's bankruptcy petition dated 7th November 2024 and a further supporting affidavit dated 4th December 2024.
6. From the foregoing, it is evident that the instant application, the bankruptcy petition and their accompanying documents were served upon the Advocates who represented the decree holder in Small Claims Case No. E5398 of 2022, contrary to my express directions. I had earlier on clearly directed that service of the application and the bankruptcy petition be effected upon the decree holder, in line with the principles of natural justice, so as to ensure that he was afforded an opportunity to respond, and to enable me to determine the instant application. In view of the fact that service of the documents filed by the petitioner was effected upon Counsel who appeared for the decree holder in the Small Claims Court, my considered view is that it did not constitute proper service in light of my express directions, as there is no confirmation that the said Counsel had been instructed to act for the decree holder in the instant application.
7. In view of the above, I am not satisfied that there was proper service on the decree holder. As a result, I am unable to proceed with the determination of the instant application without first affording the decree holder in Small Claims Case No. E5398 of 2022 an opportunity to respond to the claims made herein.
8. In the circumstances, I will not proceed to determine the application dated 4th September, 2024 on its merits at this stage. Instead, I grant the petitioner a final opportunity to effect proper service of the instant application and the petition upon the decree holder in Small Claims Case No. E5398 of 2022 within fourteen (14) days from the date of this Ruling.
9. Delivery of the ruling for the application dated 4th September 2024 is held abeyance. Should the petitioner fail to comply within the timelines given, the application herein shall stand dismissed automatically. Thereafter, the petitioner shall be at liberty to fix this matter for mention for purposes of taking directions on the hearing of the petition.

It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 31ST DAY OF JULY 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Wahome for the petitioner

No appearance for the respondent

Ms B. Wokabi - Court Assistant.

