



**Karanja v AGS Worldwide Movers Limited (Insolvency Cause E004 of 2022)
[2025] KEHC 12259 (KLR) (Commercial and Tax) (29 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12259 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E004 OF 2022**

H NAMISI, J

AUGUST 29, 2025

BETWEEN

JONATHAN KARANJA DEBTOR

AND

AGS WORLDWIDE MOVERS LIMITED CREDITOR

RULING

1. On 22 July 2022, the Debtor/Respondent filed a Notice of Motion seeking the following orders:
 - i. That this matter be certified urgent and fit to be heard ex parte in the first instance;
 - ii. That the Applicant herein be granted stay of execution of the decree and the warrant of arrest issued in Nairobi HCC No. 301 of 2014 on 16 May 2022 be lifted and/or set aside;
 - iii. That this Honourable Court do grant any action, execution or other legal process against the property and person of the debtor pending determination of these proceedings;
 - iv. That the Official Receiver be appointed as supervisor of the Debtor's proposed composition/scheme of arrangement;
 - v. That the costs of this Application be provided for.
2. On hearing the application ex parte, the Court, on 4 October 2022, ordered as follows:
 - i. That stay of any action, execution or other legal process granted against the property and person of the Debtor be and is hereby granted pending the determination of these proceedings;
 - ii. That the Applicant to serve the Application and orders to the Respondent by close of business on 5 October 2022;



- iii. That the Respondent to file and serve their responses to the said application within 7 days of being served with the same;
 - iv. That mention on 18 October 2022 for directions.
3. Subsequently, the Creditor/Applicant filed the present Notice of Motion dated 29 May 2023 seeking:
- i. Spent
 - ii. That the Honourable Court be pleased to stay the orders granted on 4 October 2022 and/or the same be conditional pending the hearing and determination of this Application inter partes;
 - iii. That pending the hearing and determination of this Application inter partes the intended ruling in this matter be arrested and/or suspended;
 - iv. That the Honourable Court be pleased to set aside all proceedings in this matter as from 23 June 2022 to 24 April 2023 and leave be granted to the Creditor to enable it file documents and submissions and/or participate in the proceedings in exercise of its right to be heard;
 - v. That this Honourable Court be pleased to set aside and/or vacate the orders granted on 4 October 2022 as they are in conflict with orders of 11 January 2022 granted in HCCC No. 301 of 2014;
 - vi. That costs of this Application be provided for.

Brief Background

4. The genesis of the present dispute lies in a commercial disagreement that was litigated to finality in Nairobi HCCC No. 301 of 2014. In that suit, judgement was entered in favor of the Creditor against the Debtor and a co-debtor. The resulting decree required the Debtor to pay the Creditor a sum of Kshs 25,705,602.85, which amounts remains unpaid to date.
5. The court record reveals that the Debtor's efforts to forestall the consequences of that judgment began within the primary suit itself. On 20 December 2021, the Debtor filed a Notice of Motion in HCCC No. 301 of 2014, seeking a stay of execution of the decree. The Application was heard on its merits and subsequently dismissed by Hon. Justice Onkwany. Following this unsuccessful attempt, the execution process continued, culminating in the issuance of warrants of arrest against the Debtor on 16 May 2022, for his committal to civil jail in satisfaction of the decree.
6. It is this imminent threat of arrest that appears to have precipitated the present proceedings. On 22 July 2022, the Debtor initiated this Insolvency Cause by filing the aforementioned Notice of Motion seeking protection under the *Insolvency Act*. The application was placed before the duty Judge, who granted several orders, most significant of which was an order that of stay of execution pending the hearing of these proceedings. The Court directed the Debtor to serve the Application and the orders upon the Creditor.
7. What transpired thereafter is a matter of significant contestation. The Debtor avers that he complied with the Court's directive and served the Creditor with the application, the orders and subsequent mention notices. He claims that the Creditor acknowledged the proceedings by filing a Notice of Appointment of Advocates and Ground of Objection on 12 October 2022. He admits, however that at least on subsequent service was effected by pinning the Mention Notice on the door of the office of the Creditor's Advocates.



8. The Creditor, on the other hand, maintains that it was never properly served and was wholly unaware of the various court attendances that followed the ex parte orders. It contends that it was shut out of the proceedings, which progressed in its absence, leading to a situation where the matter was set down for ruling on the Debtor's application without the Creditor having filed a substantive response or submissions.
9. The impasse was broken on 26 May 2023 when the Debtor was arrested on the strength of warrants issued in HCCC 301 of 2014. It was during this event that the Debtor produced the stay order of 4 October 2022, much to the surprise of the Creditor. This led to the Creditor's present application, seeking to vacate the stay orders and set aside proceedings.
10. The Application is premised on the grounds of the face of it and supported by an Affidavit sworn by the Managing Director of the Creditor, Thibault Malezieux. The Applicant avers that the Debtor/Respondent was presented before the Court on 26 May 2023 after a long search, in execution of warrants of arrest issued on 16 May 2022 in respect of a debt owed to the Creditor/Applicant in HCCC No. 301 of 2014. It is the Applicant's claim that the Debtor/Respondent filed an application dated 20 December 2021 for stay of execution in HCCC No 301 of 2014. The Application dated 28 July 2022 filed herein seeks the very same orders. The latter application was never served as directed by the Court, and indeed, there is no return of service filed. The Creditor/Applicant posits that these proceedings are not a genuine attempt by an insolvent person to seek relief, but rather a calculated, bad faith strategy to delay, frustrate, and ultimately prevent the Creditor/Applicant from realizing the fruits of a lawfully obtained judgement.
11. The Creditor/Applicant argues that the court sitting on 4 October 2022, which was ex parte, was an outright miscarriage of justice and that the orders issued were in conflict with those issued in HCCC NO. 301 of 2014. Thereafter, this matter has been set down for numerous times for Ruling, without any notice to the Creditor/Applicant. The Applicant avers that the impugned orders are prejudicial to the Applicant and ought to be set aside.
12. Further, the Creditor submits that any interim order granted under section 304 of the *Insolvency Act* automatically lapses after a period of 14 days by operation of law. Section 306(5) states that:

Except as otherwise provided by this Division, an interim order made on an application made under section 304 ceases to have effect at the end of 14 days from the date on which the order was made.
13. The Creditor/ Applicant contends that the stay granted on 4 October 2022 lapsed on 18 October 2022. The Debtor has, in effect, been enjoying the benefit of an illegal and non-existent order for well over a year, a situation which the Creditor/Applicant argues is prejudicial and must be rectified.
14. The Creditor/Applicant submits that the Debtor failed to meet the stringent statutory and jurisprudential threshold for obtaining protection under the *Insolvency Act*. It is argued that the Debtor has engaged in material non-disclosure by failing to provide a full and frank inventory of his assets and liabilities. The Creditor/Applicant relied on the cases of Rajendra Ratilal Sanghani -vs- Schoon Ahmed Noorani [2018] KEHC 2780 (KLR), Anyega v Gulf Africa Bank Limited & another (Insolvency Petition E056 of 2021) [2023] KEHC 22008 (KLR) and In re James Maina Kabatha.
15. In response, the Debtor/Respondent insists that the Creditor was at all times aware of these proceedings. He points to the filing of a Notice of Appointment and Grounds of Objection by the Creditor's Advocates as conclusive proof of service and participation. He attributes the Creditor/



Applicant's subsequent non-attendance to its own indolence, arguing that equity aids the vigilant and not the indolent.

16. The Debtor strongly refutes the allegation that his application is res judicata or an abuse of process, He draws distinction between his previous application for stay in HCCC No. 301 of 2014 and the present one. He argues that the former was premised on a proposed, but ultimately unsuccessful, appeal. The current application is founded on a different cause of action: his inability to pay the decretal sum and his statutory right to seek protection under the *Insolvency Act*. He contends that these are two separate and distinct cases, and that the dismissal of the first application does not preclude him from seeking relief under the insolvency regime.
17. The Debtor/Respondent asserts that he has fully disclosed his financial status in the petition that commenced this cause. He dismisses the evidence annexed by the Creditor/Applicant as mere advertising material, which is not representative of his actual financial worth or the health of his business.

Analysis & Determination

18. The right to be heard is a hallowed principle of natural justice and non-derogable right under the *Constitution*. A party who stands to be affected by a court order has a right to be notified of the proceedings and to be given a fair opportunity to present their case.
19. In this instance, there are conflicting averments on the question of service. The Debtor/Respondent claims service was effected, while the Creditor/Applicant denies being served with subsequent hearing notices. The Debtor/Respondent's own admission of pinning the notice on the door of the Creditor's Advocates lends some credence to the Creditor's averment of non-service.
20. The court record reveals that on 4 October 2022, the Debtor/Respondent's Advocate appeared and obtained the ex parte orders. The Debtor/Respondent was directed to serve the Application and orders by close of business on 5 October 2022. The Return of Service sworn on 5 October 2022 reveals that the Creditor's Advocates were duly served and acknowledged service by stamping and signing the Debtor's copy.
21. On 4 October 2022, the Court gave a mention date of 18 October 2022. However, the record indicates that the next court appearance was on 25 October 2022. The Creditor's Advocates were not in attendance. Part of the directions given by the Court on the day were that the matter be mentioned on 6 December 2022 and notice to issue to the Respondent. On 6 December 2022, the Court duly noted that despite the Debtor's Advocate's claim to have served the Notice, there was no affidavit of service on record to confirm the same. At the subsequent court appearance on 24 January 2023, there was no Affidavit of service by the Debtor. The Creditor then filed the present application on 29 May 2023.
22. From the foregoing narration, it is clear that the Creditor/Applicant was not served. The Creditor/Applicant argues that the order of 4 October 2022, which is final in character and effect, was granted without hearing the party whose rights are being so fundamentally curtailed.
23. In *James Kanyiita Nderitu & another v Marios Philotas Ghikas & another* [2016] KECA 470 (KLR), the Court of Appeal stated thus:

The right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system. (See *Onyango Oloo v. Attorney General* [1986-1989])



EA 456). The Supreme Court of India forcefully underlined the importance of the right to be heard as follows in Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 664, at 711:

[T]here must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”

24. It goes without saying that the Creditor/Applicant has a right to be heard on the application dated 22 July 2022 before the said application is determined. In the premise, the Application dated 29 May 2023 is merited. I hereby make the following orders:
- i. The Debtor is granted a stay of any action, execution or other legal process against the property and person of the Debtor pending the inter partes hearing and determination of the Notice of Motion dated 22 July 2022;
 - ii. The Creditor is granted leave to file and serve a Replying Affidavit to the Application dated 22 July 2022 within 14 days;
 - iii. The Debtor is granted leave to file and serve a rejoinder, if need be, within 14 days of service;
 - iv. The matter be mentioned before the Deputy Registrar on 29 October 2025 to confirm compliance and for further directions.
 - v. Costs in the cause.

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Creditor/Applicant: Mr Abidha

Debtor/Respondent: Mr. Gakaria

Court Assistant: Lucy Mwangi

