



REPUBLIC OF KENYA



**In re Samuel Kimeli Biwott (Insolvency Cause E014 of 2021)
[2025] KEHC 11985 (KLR) (11 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
INSOLVENCY CAUSE E014 OF 2021
RN NYAKUNDI, J
AUGUST 11, 2025**

**IN THE MATTER OF
SAMUEL KIMELI BIWOTT PETITIONER**

RULING

1. Before this court is a debtor's petition. The Petition is supported by an affidavit dated 28th May 2025 sworn by Samuel Kimeli Biwott who avers as follows:
 - a. That of all material time, I have been running and or carrying out transport business and specifically matatu business.
 - b. That sometime in 2017, my only matatu was involved in an accident as a result the said matatu was extensively damaged.
 - c. That that was and has been my only source of income.
 - d. That as a result of the accident some passengers were injured and thus filed CMCC No 673,674,675 of 2017, Eldoret CMCC No 785 of 2017 and Eldoret CMCC No 579 of 2018.
 - e. That in the said matters decretal sum now stands at over Kshs. 1,697,618 plus interest.
 - f. That as a result of the accident I have been unable to secure any alternative job whose income I may settle the claim and or the debt.
 - g. That as a result of the misfortunes I am therefore unable to settle the claim and or meet my financial obligations and thus seek that I be adjudged bankrupt.
 - h. That the decree holder's in the aforesaid matters have initiated execution proceedings by way of notice to show cause and in default have sought to be committed to civil jail.



- i. That the applicant has filed a petition seeking to be adjudged bankrupt as he is unable to settle claims arising from CMCC No 673,674,675 of 2017, Eldoret CMCC No 785 of 2017 and Eldoret CMCC No 579 of 2018.
- j. That the only source of my income was the matatu which was damaged beyond repair.
- k. That the insurance company Invesco Insurance that covered the motor vehicle at the time of the accident has since gone under thus exposing the applicant
- l. That I am advised by my advocate which advise I verily belief to be true that bankruptcy proceedings are designed to give a reprieve to unfortunate debtors such as the one I find myself and offer a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of the pre-existing debt.

Decision

2. In a petition of this nature which is for orders for a Petitioner to be declared by Court to be bankrupt, a Petitioner is required by law to first and foremost prove by way of evidence that he/she is unable to pay his/her debts with such a debt exceeding the assets. The Petitioner here states he is unable to pay his debts but the evidence received has no attachment assets for the court to evaluate that he is incapable of meeting his obligations.
3. It is clear that this court is vested with the jurisdiction to handle and determine a matter of this nature within the provisions of the *Insolvency Act*. The provisions of the law uses the word ‘may’ which is catch word for the court to exercise discretion in interpreting the law arriving at a determination whether the application has merit.
4. I have read this petition but there are certain provisions which are mandatory for one to institute bankruptcy proceedings. That is under Section 32 of the *Insolvency Act* 2015 it provides as follows:
 1. A debtor may make an application to the Court for an order adjudging the debtor bankrupt only on the grounds that the debtor is unable to pay the debtor’s debts.
 2. The Court may decline to deal with such an application if it is not accompanied by a statement of the debtor’s financial position containing –
 - a. Such particulars of the debtor’s creditors and of the debtor’s debts and other liabilities and assets as may be prescribed by the insolvency regulations and
 - b. Such other information as may be so prescribed.
 3.
 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 be 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.



5. Section 48 (1) and (2) of the *Insolvency Act* gives guidelines on what ought to happen upon the institution of bankruptcy proceedings.
 1. When a bankruptcy order commences
 - a. All proceedings to recover the bankrupt's debts are stayed; and
 - b. The property of the bankrupt (whether in or outside Kenya), and the powers that the bankrupt could have exercised in respect of that property for the bankrupt's own benefit, vest in the Official Receiver.
 2. Despite subsection (1), the Court may, on the application by a creditor or other person interested in the bankruptcy, allow proceedings that had already begun before the bankruptcy commenced to continue on such terms as the Court considers appropriate.
6. I have reviewed the provisions of the law and am of the considered view that the Petitioner is yet to comply with the procedural law as provided in the substantive Act. The petition therefore has been prematurely presented before this court and the same is struck out with costs.

GIVEN UNDER MY HAND AND SEAL of THIS COURT THIS 11TH AUGUST 2025

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R. NYAKUNDI

JUDGE

