



REPUBLIC OF KENYA



**In re Mary Nyambura Wanjohi (Insolvency Cause E001 of 2021)
[2024] KEHC 573 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
INSOLVENCY CAUSE E001 OF 2021
SM MOHOCHI, J
JANUARY 25, 2024**

**IN THE MATTER OF
MARY NYAMBURA WANJOHI APPLICANT**

RULING

1. By Notice of Motion dated October 18, 2022, Mary Nyambura Wanjohi moves this court, pursuant to section 1A and 3A of the *Civil Procedure Act* cap 21 laws of Kenya, order 22 rule 22 and order 51 rules 1 & 4 of the *Civil Procedure Rules* seeking the following reliefs;
 - i. Spent
 - ii. That, pending the hearing and determination of this application or further orders of this Honourable Court, there be stay of proceedings and or execution of all claims by the creditors against the debtor-Applicant herein.
 - iii. That, pending the hearing and determination of this Petition or further orders of this Honourable Court there be stay of proceedings and/or execution of all claims by the creditors against the debtor-Applicant herein.
 - iv. That, his Honorable Court be pleased to issue any other fair, just and appropriate order as the nature and circumstances of the suit dictate.
2. The Application is supported by the sworn affidavit of Mary Nyambura Wanjohi and is anchored on the following grounds;
 - i. The Debtor instituted the instant petition after she realized that she was unable to meet her financial liabilities, which were beyond her means.
 - ii. In her petition dated 24 March 2022. the Debtor listed all her creditors, and has since served all of them with the petition. and so far, there has been no response.



- iii. Despite being aware of the existence of this petition, one of the creditors by the name Leonard Njoroge Nene has continued with proceedings in Nyahururu Children Case No. 38 of 2019 with the aim of recovering his debt.
 - iv. The said Leonard Njoroge Nene has fixed Nyahururu CM’C Children No. 38 of 2019 for mention on 6th October 2022. and as such there is an attempt at defeating the substratum of the current proceedings.
3. This Court on the 5th of May 2023, directed that the Notice of Motion dated 18th October 2022, shall be heard and disposed off by way of written submissions. The Applicant was to serve all creditors with the application and directions on filing written submissions.
 4. At the time of writing this Ruling only the Applicant has filed their written submissions dated 12th June 2023.
 5. The scrutiny of the service by the Applicant as directed reveals that the Applicant effected service of either hearing or mention notice on the 16th June 2023, 19th May 2023 and 5th April 2023 which service was affected by Peter Githinji Ngure in the presence of the Applicant.
 6. The Return of Service by Peter Githinji Ngure filed on the 18th September 2023 for the service on 5th April 2023 reveals it was affected upon Nderitu Komu & Co. Advocates and other Respondents within Nyahururu town in Laikipia County. It only bore the stamp of the firm of Nderitu Komu & Co. Advocates. The vague description of service upon the other creditors can only lead one to a logical conclusion that no other party was served with this notice.
 7. The Return of Service by Peter Githinji Ngure filed on the 12th June 2023, for the service on 10th May 2023 reveals that, it was affected upon Nderitu Komu & Co. Advocates and (Gerald Muriithi Wamugunda at Kaga in Nyandarua County, Leonard Njoroge Nene at Ol Kalau in Nyandarua, David Gacii Gatibaru Ol Kalau in Nyandarua, who refused to acknowledge service.
 8. The Return of service by Peter Githinji Ngure filed on the 25th April 2023, for the service on 4th April 2023 reveals that, it was effected upon Nderitu Komu & Co. Advocates and other Respondents within Nyahururu town in Laikipia County. It only bore the stamp of the firm of Nderitu Komu & Co. Advocates. The vague description of service upon the other creditors can only lead one to a logical conclusion that no other party was served with this notice.
 9. The Return of Service by Peter Githinji Ngure filed on the 9th November 2022, for the service on 4th November 2022 reveals that, it was effected upon Nderitu Komu & Co. Advocates and other Respondents within Nyahururu town in Laikipia County. It does not bear the stamp of the firm of Nderitu Komu & Co. Advocates. The vague description of service upon the other creditors can only lead one to a logical conclusion that no party was served with this Application dated 18th October 2022 filed under certificate of urgency.
 10. That the service of the process described above falls short of the service requirements upon creditors under the *Insolvency Act*, this court however finds that in the bankruptcy petition the Applicant lists creditors who are equally listed on the mention and hearing notices.
 11. The overall import of the *Insolvency Act* is continuity and recovery where possible, to give a distressed Debtor a second chance. Where the Debtor is a natural person, Part 11 of The *Insolvency Act* provides for Alternatives to Bankruptcy.



12. One such alternative is for a Debtor to seek an Interim Order so as to make a proposal to his/her Creditors for a Composition in satisfaction of the debts or a Scheme of Arrangement of its financial affairs. This remedy is provided in section 305 of the *Insolvency Act*.
13. While in this instance the Applicant-Debtor submits and urges her Application be allowed under section 306 of the Act, this Court is of the contrary view that the Applicant-Debtor may only enjoy the interim order where he/she opts for alternatives to bankruptcy as is prescribed in section 14 of the Act, which include;
 - (a) enter into a voluntary arrangement in accordance with Division I of Part IV;
 - (b) make a proposal to creditors in accordance with Division 2 of Part IV;
 - (c) pay creditors in instalments under a summary instalment order under Division 3 of that Part; or
 - (d) enter the no asset procedure in accordance with Division 4 of that Part.
14. In the case of *Rajendra Ratilal Sanghani v Schoon Ahmed Noorani* [2018] eKLR J. Tuiyott J (as he then was) further expounded on the on the import and purpose of the interlocutory measures contemplated by the Act to benefit a debtor stating that:

“In its very nature a section 304 Application is for an interim relief which, ordinarily, ought to last for a very short period. Indeed section 306 (5) provides as follows in respect to its ideal duration:-

“Except as otherwise provided by this provision, an interim order made on an application made under section 304 ceases to have effect at the end of fourteen (14) days from the date on which the order was made”

Because the objective of the relief is to grant the Debtor some brief breathing space to present a viable proposal to his/her Creditors, there should be no reason to make it an involved process and it should, in my view, typically be ex-parte proceedings.”
15. The Applicant Debtor has not expressly indicated her desire for any of the options alternative to bankruptcy. Section 23 of the *Insolvency Act* 18 of 2015, provides for execution process(s) issued by other Court(s) as follows;
 - (1) This section applies if an execution process has been issued by a court other than the High Court.
 - (2) 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.
16. My appreciation of the *Insolvency Act* part II bankruptcies of natural persons is that; A debtor may obtain stay of proceedings and executions from the issuing Courts after it is demonstrate to the issuing Court that an Application for a bankruptcy Order in respect to the debt has been made in the High Court.
17. This Court has accordingly arrived at the conclusion that the Application dated June 12, 2023 is without merit.



18. The Application is thus dismissed with no orders as to costs.
 19. The Court Assistant shall assign a mention date for directions of the bankruptcy petition.
- It is so Ordered

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 26TH JANUARY, 2024

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MOHOCHI S.M

JUDGE

