



REPUBLIC OF KENYA



**In re Opinder Ssingh Naul (Insolvency Cause E033 of 2023)
[2024] KEHC 3520 (KLR) (Commercial and Tax) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3520 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY CAUSE E033 OF 2023
PM MULWA, J
MARCH 21, 2024**

RULING

1. By a Debtor's Petition dated 25th August 2023, Opinder Singh Naul, a resident of Nairobi, petitioned to this court for a Bankruptcy Order on grounds that he was unable to pay his debts. He prayed that he be adjudged bankrupt. Annexed to the Petition is his Statement of Affairs (Individual Person) (Form No. 11) reflecting assets worth Kshs. 60,000/= and liabilities to the tune of Kshs. 7,737,865.75. His Creditors whose debts are unsecured are shown as Braeside School - Kshs. 2,547,448; I & M Bank Limited - Kshs. 182,609.10; Manju Naul - Kshs. 3.310,000; Seble Bayu-Kshs.1,000,700; Mshwari Loan - Kshs.17,108.65; Daniel Gitari - Kshs.120,000 and Amrita Bhatt - Kshs.560,000.
2. In addition, the debtor provided information relating to his affairs and also filed a supporting affidavit sworn on 25th August 2023 deposing that previously he was employed by Prime Bank as a property manager until September 2020 when his contract ended. He averred that he was sued by Sable Bayu Astatke in Children Case No. 1232 of 2013 for maintenance of his then minor son Bethel Naul Opinder and ordered to pay for upkeep, medical expenses, school fees and school related expenses at Braeside School. That the said order was upheld on appeal. The petitioner averred that due to financial difficulties he defaulted in payment of the school fees and accrued arrears of Kshs. 2,547,448. He added that though child attained 18 years on 18th July 2023, the petitioner was committed to civil jail between 20th and 24th June 2023 in an attempt to compel him to pay the outstanding amount.
3. The petitioner further avers that he has borrowed money from friends, family members, I & M Bank and Mshwari to meet his financial obligations but has ended up being unable to pay back. That the creditors have made demands for payment which has exposed him to mental anguish and affected his psychological well-being. According to the petitioner, at 74 years he has no job or income and no assets and has majorly been relying on his daughter for support and upkeep.
4. The petitioner contended that his wife who has been making payments on his behalf has had her savings depleted and she has even threatened to divorce him. As a consequence, he prays for a bankruptcy order because he is totally unable to pay his debts.



5. The petition was advertised in the Daily Nation newspaper of Saturday 21st October 2023. There was no objection by creditor(s). The Official Receiver had no objection for the granting of the orders sought.
6. The petitioner's testimony was essentially a replication of his affidavit in support of the Petition, save to add that he now resides at the Sikh Temple, Nairobi.

Determination

7. The policy underpinning insolvency legislation and practice is that a debtor is entitled to seek relief from unmanageable debt through bankruptcy if the debtor is unable to resolve his or her financial difficulties through other means. However, bankruptcy is regarded as an option of last resort because it has serious consequences.
8. The Petition must be made in good faith and there should be no material non-disclosure. There must be clear proof of actual insolvency and the petitioner's case must firmly be asserted in the founding affidavit.
9. To establish insolvency; it must be shown that the debtor's liabilities as a fact exceed his assets and not merely that they might do so, and clear proof of this must be adduced. An applicant must make a prima facie case. The petitioner's case is premised on his assertion that his was sued in Nairobi Children's Case No. 1232 of 2013 and ordered to pay for upkeep, medical and school fees for his minor child at Braeside School. Documents were adduced to prove the existence of the children case, fees statement and demand letter for outstanding fees as well as demand letters from I & M Bank and decree, notice to show cause and committal to remand. As a requirement, a notice of the application was published in the Daily Nation newspaper of 21st October 2023 and the creditors were afforded the opportunity to come forward to either oppose or support the Petition.
10. Upon analyzing the material before me and flowing my discussion herein above it is my finding that the petitioner has discharged the burden of proof and the instant Petition is merited.
11. I therefore make the following orders:
 - a. Opinder Singh Naul be and is hereby adjudged bankrupt.
 - b. The Official Receiver is hereby appointed to be the Bankruptcy Trustee in respect of the Debtor's property.
 - c. Costs of the petition shall be borne out of the Debtor's estate.

RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF MARCH 2024.

.....

P. MULWA

JUDGE

In the presence of:

Debtor - present in person

Ms. Kauma h/b for Mr. Njenga for the Official Receiver

Court Assistant: Carlos

