



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

BANKRUPTCY CAUSE NO. 4 OF 2003

LEONARD ONYANCHA OCHENGO.....DEBTOR

RULING

By a notice of motion dated 27th February 2004 and filed on 22nd April 2004, M/S Giro Commercial Bank Ltd to which M/S Commercial Bank Ltd, had earlier on assigned all of its business, seeks an order to rescind and set aside a receiving order made herein on 23rd January 2003 against Leonard Onyancha Ochengo, the debtor.

The application is brought under sections 100 and 103 of the Bankruptcy Act and rules 15 and 147 of Bankruptcy rules and is supported by an affidavit of Modali P. Sastry, the General Manager of the applicant. There was no response from the debtor. In his submission Mr. Ngaru for the applicant stated that in support of his application for receiving order the debtor had filed a statement of affairs which contained numerous omissions on his assets. Under annexure "MPS 2" to the affidavit of Mr. Sastry which is a bundle of certificates of Official Search Mr. Ngaru said that the applicant has demonstrated that the debtor owned several properties before and after the receiving order was made. According to Mr. Ngaru if the Court had been made aware that the debtor had not told the truth the receiving order would not have been issued.

It is clear that the official Receiver who now represents the Debtor was properly served with this application on 19th May 2004 but no replying affidavit nor grounds of opposition was filed in response to this application.

The debtor in his application does not appear to have made a full disclosure of his assets which the Official Search certificates confirm that he owns . It is also clear that the debtor in his application was not honest and appears to have deliberately withheld vital information from this Court.

In the circumstances I would rescind the Receiving Order made on 23rd January 2003. The applicant will have the costs of this application.

Dated this 11th August 2004.

B.K. TANUI

JUDGE



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