



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND TAX DIVISION

INSOLVENCY CAUSE NO.13 OF 2018

IN THE MATTER PF MORRIS GITONGA NJAGI KATHIANYU t/a SUMO TRADING ENTERPRISES(APPLICANT)

AND

IN THE MATTER OF THE INSOLVENCY ACT 201 LAWS OF KENYA

JUDGMENT

1. The petitioner lodged an instant Insolvency cause in 28th June 2018 on the basis that he is unable to pay his debts due to diverse legal action, lack of sufficient working capital among other reasons.

2. The suit papers were served on all the creditors who instructed their respective advocates to file Notice of Appointment and intention to appear as follows:

a) On 7th December 2018, M/S Waziri Omollo & Co. Advocates filed a Notice of Intention to Appear and affidavit of debt stating that the petitioner who trades as Sumo Traders owes Jamii Distributors Kshs 840,699.92.

b) On 8th April 2019, M/S Yano & Co. Advocates filed Notice of Appointment in respect to Commercial Grain Millers, a creditor.

c) On 6th April 2019, M/S Risper Arunga & Co. Advocates filed a Notice of Appointment of advocates on behalf of Dennis Majani, a creditor and decree holder in Kitale CMCC204 of 2015.

3. At the hearing of the petition, the petitioner testified that following a road traffic accident that occurred in 2015 involving his lorry he lost all his business stock and his driver also died in the said accident. He stated that he was engaged in the business of selling cereals and that after the accident, his supplies, commercial Grain Millers and Jamii Distributors demand that he pays more than Kshs 3.7 million which sum he was not able to settle thereby leading to the auction of all his shop goods.

4. In the same clear, one Gillette Traders also demanded a debt of Kshs 3.5 million which he was also unable to pay thereby leading to the auction of his lorry Registration No. KBN 085 alongside the remaining shop goods.

5. The petitioner's case is that he is not able to pay all the creditors as he is currently engaged in small time trade of selling vegetables, maize and wheat flour. He added that he will however be willing to settle the debts at kshs 50,000 at interval of 3 months as shown in the proposal dated 7th May 2018.

6. The petitioner submitted his certificate of compliance to the Official Receiver on 27th June 2018, the statement filed on Preliminary Examination of the debtor shows that he is worth Kshs 22,000 and that the debt is Kshs 6,104,402 as at 29th June 2018.

7. Having considered the petitioner's testimony and the pleadings filed before this court, I find that the petitioner has established the threshold for being declared bankrupt.

8. The creditors did not oppose the petition at the hearing despite service with the hearing notices. They however confirmed, through their various affidavits, that the debtor is truly indebted to them and has been unable to settle the debts.

9. The court notes that in the case of the debt owed to Mr Dennis Majani, the petitioner was not able to pay it despite being committed to civil jail in execution of the decree issued in Kitale CMCC 204 of 2015.

10. For the foregoing reasons, I am satisfied that the petition is merited and I therefore allow it in the following terms:

a) The petitioner is adjudged bankrupt.

b) The Official Receiver is appointed a trustee of the petitioner.

c) I make no orders as to costs.

d) There be liberty to apply.

Dated, signed and delivered in open court at Nairobi this 23rd day of January 2020.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Omeri for Saende for the applicant

Court Assistant – Sylvia



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