



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Bankruptcy Cause 12 of 1988

LEONARD KIMANI KEARIE.....DEBTOR

RULING

This is an application pursuant to the provision of S.20 of the Bankruptcy Act, Cap 53 Laws of Kenya. The applicant is the official receiver as the receiver of the estate of Leonard Kimani Kiarie, the debtor. The official receiver prays that the debtor be adjudged bankrupt. The ground put forward for the application is that the creditors in the first creditors meeting passed a resolution that the debtor be adjudged bankrupt. the meeting was allegedly held on 15th May 1990.

The application has been opposed by the debtor on the ground on the ground that the application is premature. Premature because he had not been publicly examined pursuant to the provision of the Section 17 of the Bankruptcy Act; and secondly no scheme of compensation had been requested for or given before he could be adjudged.

Mr. Simani for the debtor submitted that in a debtors petition the purpose is mainly to seek the protection of the court from creditors and its assistance to manage his affairs. Consequently, he said, the court must be fully informed as to the position of the debtors estate. That can only be done if the debtor is examined publicly.

Mrs. W.B. Gachegu disagreed. She submitted that the public examination is intended to provide information to the Official Receiver for the purpose of the management of the debtor's estate. Furthermore it was her submission that the debtor has not provided a scheme of arrangement or made any proposal as to how he intends to pay the debt owing.

S.17, above, is mandatory. The public examination is normally held at the request of the Receiver. Rule 151 of the Bankruptcy Rules Provides:

“It shall be the duty of the receiver to make an application to the court to appoint day and hour for holding the public examination of the debtor...”

But S.17, above is clear that there are instances when such public examination is not necessary. It

provides in pertinent part as follows:

“17 (1) where the court makes a receiving order, it shall, save as provided in this Act, hold a public sitting

.....” (Emphasis supplied).
I could find no provision, nor was any brought to my attention, to bring the debtors case within the exception to the application of the above section. Moreover, whether or not to declare a debtor bankrupt is in the discretion of the court. Rule 181 of the bankruptcy rules seems to me to be clear that there are several matters a court must be satisfied on before adjudication. To my mind the holding of a public examination of a debtor is among those.

In the light of the foregoing I am disc inclined from adjudging the debtor bankrupt before he is publicly examined, or unless he himself indicates to the court that he should be so adjudged.

The application is dismissed. No order as to costs.

Delivered this 27th day of June 1990.

S.E.O BOSIRE

JUDGE



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