

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
IN THE MATTER OF INSOLVENCY ACT NO 14.OF 2011
LAWS OF UGANDA.
BANKRUPTCY PETITION NO.2 of 2016

AND

IN THE MATTER OF PETITION FOR BANKRUPTCY

AND

**IN THE MATTER OF PETITION FOR RECEIVING ORDER BY UZAIRU AHAMED
MAGALA (DEBTOR)**

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

Uzairu Ahamed Magala herein referred to as the Petitioner, a Director at Intercontinental Travel Services obtained monies from various institutions and individuals. Subsequently he was unable to pay his debts the biggest creditor being Lion Assurance Company instituted a suit against him and he was released on court bail. As a result of fear that he could get rearrested, he filed a petition in this court.

The Petitioner filed the Petition under sections 3,20,21 and 22 of the Insolvency Act No. 14 of 2011. Seeking a receiving order against his estate, that he be adjudged bankrupt and that all pending court action against him be stayed pending disposal of this Petition.

This Petition is premised on the following;

- 1) That the Debtor is indebted to a tune of UGX 3,000,000,000/= arising out of monies he got from various institutions and individuals which include; Lion Assurance Company owed US \$ 402,000, Buchanan Sam owed UGX 180,000,000, Standard Chartered Bank owed UGX 400,000,000, Centenary Bank owed UGX 550,000,000, Kayiira Robert owed UGX 200,000,000, Nsubuga Yasin owed US \$ 11,130, Rashid Mahdi owed US \$ 30,000,

City Oil owed UGX 25,000,000/=, Mugisha Sebba owed US \$ 5000, Simba Travel Care owed US \$ 9812, Kigonvu Bob owed UGX 15,000,000/= and Nsubuga Derick owed UGX 10,000,000/=.

- 2) That the Debtor endeavored to settle some debts out of his assets however the assets /property are used up and he has no more cash, assets or other property to furnish his debts.
- 3) The Debtor declares that he is unable to pay the said debt and satisfy his creditors' claims.
- 4) That it is necessary that Court issue a receiving order against his estate and he be adjudged bankrupt.
- 5) That Court stays all pending actions, proceedings or executions or any other legal processes against the Debtor's property.

This Petition is supported by an Affidavit deponed by the Petitioner who declares that he is unable to pay his debt and that before he presented this Petition, he was released on court bail pending the suits against him by his creditors Lion Assurance Company. He told court that his indebtedness resulted from thugs that broke into his office and stole his money. That the first time this theft occurred they took US \$ 130,000. He subsequently entered into a contract with Serena Hotel to handle transport with Lake Victoria and Hotel Protea but these also did not bear fruit.

The issues to be determined by this court are;

- 1. Whether the Petitioner is unable to pay his debts?**
- 2. Whether the court can grant a bankruptcy order in the circumstances?**
- 3. Whether the Petitioner has any properties to be administered by a trustee in bankruptcy?**

In regard to the first issue of whether the Petitioner is unable to pay his debts the requirement of the law is that the Petitioner must prove by way of evidence that he or she is unable to pay his or her debts with such debt exceeding Uganda Shillings Fifty Million Only for this court to entertain; **In the Matter of Hellen Kakyoo, Bankruptcy Cause No. 4 of 2014**. This requirement is found under section 3 of the Insolvency Act which provides;

- 3. Inability to pay debts.*

(1) *Subject to subsection (2) and unless the contrary is proved, a debtor is presumed to be unable to pay the debtor's debts if—*

- (a) the debtor has failed to comply with a statutory demand;*
- (b) the execution issued against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part; or*
- (c) all or substantially all the property of the debtor is in the possession or control of a receiver or some other person enforcing a charge over that property.”*

In the instant case the Petitioner has shown court that he has failed to service his debts to the extent that his creditors Lion Assurance Company caused his arrest in execution. In other words, determining whether a debtor is unable to pay his debts, contingent or prospective debts may be taken into account. Record also indicates that the Petitioner filed a statement of affairs stating his creditors, amounts owed as well as a copy of his court bail, **Annexures A-J**. Section 20 of the Insolvency Act provides;

“A debtor may petition court for bankruptcy alleging that the debtor is unable to pay his or her debts and the court may, subject to sections 21 and 22 make a bankruptcy order in respect of the debtor.”

The statement of affairs in itself summarises the financial difficulties arising from the Petitioner's inability to service the loans from his creditors. The Petitioner explained this inability to pay his creditors as a result of financial difficulties occasioned from the theft that occurred in his office. Furthermore, his financial constraints also resulted into; the sale of his property comprised in Mengo Kisenyi Kyadondo Block 12, Plot 12 to one Kayiira Robert so as to clear his outstanding loans. However he failed to clear his outstanding loans and as a consequence the mortgage still stands and he remains indebted to Kayiira Robert to a tune of UGX 200,000,000/= **Annexure A**.

Furthermore, a mortgage required him to pay in installments a tune of UGX 500,000,000/=, **Annexure B**. The Petitioner however defaulted on his obligations under the mortgage and as a result the bank issued him with a default notice. The bank wrote in part;

“TAKE NOTICE that you have defaulted on your obligations under the said Mortgage/Over Draft agreement through non-payment of the due interest payable and

the principal amount of Shs.500,000,000/=.”

Thirdly, the Petitioner failed to clear his outstanding loans with Standard Chartered Bank and as a result had unsatisfactory performance of his credit facilities with no cash flows at the bank’s disposal to support the running of the existing credit facilities. His account indicated arrears to a sum of UGX 7,909,601/=, **Annexure C**.

The Petitioner obtained travel air tickets and travel consultancy services from Simba Travelcare Ltd on credit. Upon failure of payment the Petitioner was issued with a demand notice from Debts Concept Limited dated 7th October 2016 stating that both cheques issued by the Petitioner in favour of Simba Travelcare Ltd were all dishonoured by the bank which left the Petitioner’s account indebted to a tune of US \$ 9812.9 **Annexure D**.

The Petitioner also breached a contract of sale by reselling a building (Bridge Hotel) in Mengo Kisenyi he had already sold to Buchanan Sam to a third party which resulted into Buchanan demanding a refund of US \$ of 17,555 and an interest of UGX 214,000,000/=. It is also important to note under this head that a cheque, **Annexure G** which he had given to Buchanan by way of refund was dishonoured by the bank. To date that money has never been paid, **Annexure E**.

Lastly the Petitioner failed to clear his outstanding loans with Centenary Bank. In a letter dated 24th June 2016, **Annexure F** the bank wrote;

“Please take further notice that unless you regularize the Overdraft account within five (5) days, the Bank will not hesitate to call up both the loan and overdraft facilities currently outstanding as below;

- i. The loan outstanding as at Usd.323, 778 (United States Dollars Three hundred twenty-three thousand seven hundred seventy-eight only).*
- ii. The overdraft outstanding at Ushs, 525,503,212/=(Uganda Shillings Five Hundred Twenty Five Million Five Hundred Three Thousand Two Hundred Twelve Only).”*

The Petitioner has in this proved indebtedness by attaching statements of account that speak for themselves. It is also clear that he has failed to service them and or failed to pay them. The foregoing are acts of bankruptcy which attract such orders as petitioned for; **In The Matter of a Petition for a Receiving Order by Thomas I. Kato Bankruptcy Petition No. 13/2002**

Pages 1 and 2.

Turning to whether the court can grant a bankruptcy order in the circumstances, it is trite that this court is vested with jurisdiction to handle and determine a matter of this nature as it deems fit; **section 20 of the Insolvency Act.** Furthermore, once a debtor files a Petition of bankruptcy on allegations that he or she is unable to pay his or her debts, then the court “may” grant the bankruptcy order subject to the statement of affairs of the debtor being presented during a public examination.

In the circumstances, there is evidence to show the Petitioner’s indebtedness through his statement of affairs. For a receiving order to be made, it is necessary that the Petitioner should have fulfilled the following; proved his inability to pay his debts which then would obligate the court to grant the receiving order. The grant of order however can only be given where the Petitioner has first filed a statement of affairs with the official receiver. After which a receiving order would then issue under section 4 of the Bankruptcy Act vesting the estate of the Petitioner in the official receiver.

From the submission of Counsel it is clear that the Petitioner has not yet submitted his statement of affairs to an Official Receiver and since that is a mandatory requirement this court declines to grant the orders prayed for.

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David K. Wangutusi

JUDGE

Date: 28th April 2017