

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
IN THE MATTER OF THE BANKRUPTCY ACT CAP 67
AND
IN THE MATTER OF A PETITION FOR A RECEIVING ORDER BY
ABDI NOOR UKASH
BANKRUPTCY PETITION NO. 02 OF 2008

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING:

The petitioner herein ABDI NOOR UKASH filed this petition under Section 2 (f), 4, 7 and 10 of the Bankruptcy Act Cap. 67 and Rules 145, 146 (1), 149 and 166 (1) of the Bankruptcy Rules 1915. He is seeking a receiving order and an order that he be adjudged bankrupt.

The main ground for the petition is that he is unable to pay his debts. Section 2 (1) (f) of the Act provides:

“2. Acts of bankruptcy.

(1) A debtor commits an act of bankruptcy in each of the following cases:

a)

b)

c)

d)

e)

f) ***If he or she files in the court a declaration of his or her inability to pay his or her debts or presents a bankruptcy petition against himself or herself.***

Under Section 4 of the Act, court is empowered to make a receiving order for the protection of the debtor's estate, where a debtor commits an act of bankruptcy.

From decided cases, however, a receiving order can only be granted after the debtor has complied with all the prescribed conditions.

See: ***Re Pin fold, ex parte Pin fold [1892] I Q B 73***
:Kahel Mohammad Abdel Magid Nagy, Re
Bankruptcy Petition No. 8 of 2002
(Commercial Division).

Section 7 of the Act governs Debtor's Petition and order on the petition. It provides:

“7 (1) A debtor's petition shall allege that the debtor is unable to pay his or her debts, and the presentation of the petition shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his or her debts, and the court shall hereupon make a receiving order, except, however, that the order shall be refused until the debtor shall have filed with the official receiver a statement of and in relation to his or her affairs prepared in accordance with Section 15” (emphasis mine).

Section 15 of the Act is titled:

“Debtor’s Statement of affairs.”

It provides in subsections (1) and (2) as follows:

(1) The debtor shall make out and submit to the official receiver a statement of and in relation to his or her affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor’s assets, debts and liabilities, the names, residences and occupations of his or her creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement should be submitted:

a) Prior to, but not more than three days before the date of the presentation of the debtor’s petition;

b)”

In the instant case, the petitioner has not complied with the provisions of Section 15 of the said Act by filing the statement of affairs with the official receiver as required. The section is couched in mandatory terms. The statement of affairs herein does not bear the stamp of the official receiver, implying that it was not so filed. In these circumstances, the Petition would be refused and the petitioner directed to first file his statement of affairs with the official receiver as required by Sections 7 and 15 of the Bankruptcy Act, if he so chooses.
Petition refused.

Yorokamu Bamwine
JUDGE

05/11/2008

5/11/2008:

Mr. Byemaro for petitioner

Petitioner present

Court:

Ruling delivered.

Yorokamu Bamwine

JUDGE

5/11/2008