

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT)

IN THE MATTER OF THE BANKRUPTCY ACT CAP. 71

AND

IN THE MATTER OF A PETITION FOR A RECEIVING ORDER BY THOMAS I. KATO
(A DEBTOR)

BANKRUPTCY PETITION NO. 13 OF 2002

BEFORE: THE HONOURABLE MR. JUSTICE JAMES OGOOLA

RULING

This bankruptcy petition was filed by the Debtor (Mr. Thomas I. Kato), pursuant to sections 3(1) (f), 5 and 8 of the Bankruptcy Act (Cap. 71).

The petition sought the following orders:

- a) a receiving order against the Debtor's estate;
- b) an order to stay all pending court actions, execution and other legal processes against the Debtor and his property; and
- c) such other orders as may be just.

The petition was supported by an affidavit deposed to by the Debtor, together with a Statement of Affairs dated 30/07/2002. The grounds of the petition were stated to be the Debtor's inability to pay his debts. In particular, two debts were recited — namely:

- (i) a debt owed to the INTERNATIONAL CREDIT BANK, in the approximate amount of, Shs.2.369 billion/-, arising out of HCCS No. 212/2001; and
- (ii) a debt owed to NILE BANK, in the sum of Shs.145.784 million/-, arising out of HCCS No. 685/99.

Learned counsel for the Petitioner submitted that this is a petition by a debtor; and that once a debtor petitions Court for bankruptcy, the Court “*shall make a receiving order*” under section 8 of the Bankruptcy Act, as well as under Rule 166(1) of the Bankruptcy Rules of 1915 of the United Kingdom (the “UK Bankruptcy Rules”).

It is trite law that the U.K. Bankruptcy Rules are applicable in Uganda, by virtue of section 164 of the Bankruptcy Act - see also the cases of **Ex parte Painter [1895] 1QB 85**, and **Wavamuno v Sezi Teddy Cheeye, Bankruptcy Petition No. 1195**.

I am satisfied that the Petitioner in this petition has observed the procedural requirements for a petition by a Debtor. First, the petition was brought pursuant to sections 3(1) (f), 5 and 8 of Cap. 71. Second, the petition was duly accompanied by a Statement of the Debtor’s Affairs, verified by affidavit, in conformity with section 16 of Cap. 71 — which provides, in relevant parts, as follows:

“16. (1) A debtor shall make out and submit to the official receiver a statement of and in relation to his 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 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 shall be so submitted —

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

(b).’

Third, the petition was attested by Mr. John Magezi, and advocate of this Court and a notary public, as required by Rule 148 of the U.K. Bankruptcy Rules. Fourth, in compliance with Rule 149 of the U.K Bankruptcy Rules, the Petitioner did deposit, at the time of presentation of the petition, a sum in Uganda Shillings, equivalent to Five British Pounds. In this regard, Court is

satisfied that the deposit of Uganda Shillings (instead of British Pounds) does not offend Rule 149, in as much as those U.K.

Bankruptcy Rules are to be adjusted to fit the circumstances of Uganda. In this connection, section 164 of Cap. 71 specifically provides that:

“164 The Bankruptcy Rules, 1915... of the United Kingdom are declared to be in force in Uganda and shall be read with and considered as part of this Act and it shall be lawful for the court to construe the said rules with such verbal alterations not affecting the substance as may be deemed expedient to render the same applicable to local circumstances and to any matters before the court:

Provided always that any such construction or alteration shall not be inconsistent with the provisions of this Act.” [Emphasis added]

All the above findings by the Court, attach to the procedural propriety of the instant petition. I now turn to a consideration of the substantive matters raised in this petition. As earlier stated by learned counsel for the Petitioner, this is a petition by a Debtor. Accordingly, two preconditions need to be fulfilled before a receiving order may issue. **First**, the Debtor must prove his indebtedness; and **second**, the Debtor must have committed an act of bankruptcy — see OUMA J, in the **Wavamuno** case (*supra*).

As regards the first precondition (namely, proof of indebtedness), the Court is satisfied that the Debtor has indeed proved his indebtedness to the two creditors: ICB, and NILE BANK. The two Court judgments in HCCS No. 212/2001 and in HCCS No. 685/99 were duly attached to the petition as Annexures “AA” and “BB”, respectively. They show the decretal sums of Shs.2,369,249,261/- and Shs.145,007,849/=, respectively, that were awarded against the Petitioner in the above two suits. Additionally, the Petitioner deposed to an affidavit dated 30/07/02 and took out a Statement of his Affairs, duly certified by the Official Receiver, and attested by a notary public - - in which the details of his creditors and debts are fully specified. On the basis of all the above, the Court finds that the Debtor has proved his indebtedness.

For the second prerequisite (namely, committal of a bankruptcy act), sections 3 and 5 of Cap. 71 are pertinent. Section 3 defines and lists the various acts that constitute a “bankruptcy act”. Subsection (1) (f) thereof provides that:

“3 (1) A debtor commits an act of bankruptcy in each of the following cases —

(f) if he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;”

By filing the instant petition against himself and by making the declarations of his inability to pay the various debts that are particularised in his Statement of Affairs, Mr. Katto has, *ipso facto*, committed an act of bankruptcy. That being the case, sections 5 and 8 of Cap. 71 come into play. Section 5 provides that:

“5. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.”

Section 8 provides as follows:

“8. (1) A debtor’s petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order:

Provided, however, that such order shall be refused unless, and until the debtor shall have filed with the official receiver a statement of and in relation to his affairs prepared in accordance with the provisions of section 16 of this Act.”

In light of all the above, I find that the Debtor in the instant petition has committed an act of bankruptcy as defined in section 3(1) (f); and has satisfied the conditions required under sections 8 and 16 of the Bankruptcy Act for the issuance of a receiving order. Accordingly, the Court hereby issues a receiving order for the protection of the estate of the Debtor/Petitioner, Mr. Thomas I. Katto. The Official Receiver is hereby constituted receiver of the estate of Mr. Thomas

I. Katto; and the said Mr. Katto is hereby required, immediately after the issuance of this order, to attend the Official Receiver at his offices at the Companies Registry in Kampala. The above order meets the first prayer of the Petitioner. His second prayer was for an order to stay all pending court actions, execution and other legal processes against him and his property. Such an order would issue pursuant to section 11 of the Bankruptcy Act. That section provides, in relevant part, that:

“11(1) The court may, at any time after the presentation of a bankruptcy petition, stay any action, execution or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

(2) Where the court makes an order staying any action or proceeding, or staying proceedings, generally, the order may be served by sending a copy thereof, under the seal of the court, by post to the address for service of the Plaintiff or other party prosecuting such proceeding.”

It is evident that the above-quoted section 11 confers on the Court discretion to stay proceedings against the debtor. Nonetheless, for the Court to exercise its discretion, the Petitioner needs as a minimum to give the reason(s) for the exercise of that discretion. In the instant case, the Petitioner has not given any reason(s) at all for his prayer, nor has he even as much as indicated the number or nature of the proceedings that are allegedly pending against him, and in which court(s) or fora such proceedings are being entertained. Accordingly, the Court has no basis whatsoever, on which to exercise its discretion. In the circumstances, the Court is unable to make the second order that was prayed by the Petitioner.

The costs of this petition shall be costs in the cause.

Ordered accordingly.

James Ogoola

JUDGE

11/10/2002

DELIVERED IN OPEN COURT, BEFORE:

Richard Obonyo, Esq (holding brief for Apollo Makubuya, Esq — Counsel for the

Petitioner/Debtor

J.M. Egetu — Court Clerk.

James Ogoola

JUDGE

11/10/2002