

THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
IN RE: MUJUNI KENNETH, A DEBTOR
BANKRUPTCY PETITION NO 5 OF 2012
BEFORE HON. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

The Petitioner, Mujuni Kennedy hereinafter referred to as the Petitioner petitioned this court under sections 2 (1), (f), 4, 7, 8 and 10 of the Bankruptcy Act cap 67, rule 145 (1) of the Bankruptcy (UK) Rules, 1915 for a declaration of bankruptcy and a receiving order in respect of any estate/person of the petitioner. The petition shows that the petitioner is a male adult Ugandan of sound mind trading as Kabs Steel Works at Namugongo Kyaliwajjala and is the sole proprietor of the business. He avers that he is indebted to several companies which include: Uganda Baati Ltd for Uganda Shillings 64,247,623/=; Roofing's Limited for Uganda Shillings 48,440,800/=; Steel and Tube Industries Ltd for Uganda shillings 29,909,450/= and a Global Trust Bank Ltd for Uganda shillings 73,096,750/=. The total debt of the petitioner to all the named creditors is Uganda shillings 215,694,588/=.

The petitioner's case is that he tried his best to discharge the above written debts but with no success as his business is facing an economic downturn. Consequently he avers that he is unable to pay all these debts in order to satisfy any of his creditor's just claims. In the affidavit in support and verification of the petition, the petitioner avers that he submitted his statement of affairs to the Official Receiver and is annexure A5. Correspondences relating to the affairs of the petitioner are attached to the affidavit verifying the petition as annexure A1, A2, A3 and A4. A1 is a payment schedule for Uganda Baati Ltd which discloses a claim of Uganda shillings 64,247,623/= owing against the petitioner. The petitioner was given seven days from 22 November 2012 to clear his indebtedness. A demand notice by Roofing's Limited dated 3rd of July 2012 makes a demand for Uganda shillings 48,440,800/= and it gives the petitioner up to 14 July 2012 to pay. Annexure A3 dated 13th of September 2012 is a demand for outstanding balance of Uganda shillings 29,909,450 by Steel and Tube Industries Ltd. The petitioner was required to respond within five days from the receipt of the letter failure for which legal redress was to be sought against the petitioner. Annexure A 4 dated 6th of November 2012 is the recall of loan notice of Global Trust Bank Ltd indicating that the account of the petitioner was overdrawn by Uganda shillings 73,096,715/= with the petitioner having an obligation to pay Uganda shillings 131,404,335/=. An additional document is the statement of affairs which disclosed amounts owing and that the petitioner has nothing expected from assets to meet his obligations.

The petitioner was represented by Counsel David Mushanga who addressed the Court on the merits. The petitioner's case is that because the petitioner has lodged a petition under the relevant laws, he is deemed to have committed an act of bankruptcy. Counsel summarised the facts of the petition written above. The petitioner fulfilled the requirements of sections 2 (i) (f) and 7 (i) of the Bankruptcy Act and rules 166 (i) of the Bankruptcy Rules. Counsel further prayed for stay of proceedings pending any actions under section 10 of the Bankruptcy Act. His argument is that the petitioner has been threatened with legal action and inclusive of criminal proceedings for issuing cheques which bounced.

I agree that under the Bankruptcy Act and specifically section 2 (2) thereof, the definition of a debtor includes a petitioner who was personally carrying on business in Uganda and was personally present in Uganda at the time the act of bankruptcy was committed. An act of bankruptcy is defined by section 2 (i) (f) of the Bankruptcy Act and includes the filing in the court of an action for a declaration of his or her inability to pay his or her debts or presentation of a bankruptcy petition against himself or herself by a Debtor/Petitioner.

In this case the petitioners petition avers that he carries on business in Kampala, Uganda and the petitioner filed a bankruptcy petition against himself. In the petition it is alleged that the petitioner is unable to pay his debts and has given a schedule of creditors with the amount owed to each of them as summarised at the beginning of this ruling. Section 7 of the Bankruptcy Act makes it mandatory for a debtor in a petition brought by the debtor, to allege that he or she is unable to pay his or her debts and that there is no evidence that the petitioner has filed a previous petition for declaration of inability to pay debts. Furthermore, under section 7 (1) of the Bankruptcy Act it is mandatory for a court to make a receiving order pursuant to a declaration of inability to pay debts in a debtors petition. This mandatory receiving order is conditional upon the debtor filing a statement of affairs with the official receiver. The petitioner has filed a statement of affairs with the official receiver and has fulfilled all the requirement of law for the issuance of a receiving order. In the premises a receiving order is issued under section 4 of the Bankruptcy Act vesting the estate of the Petitioner in the Official Receiver. The vesting of the petitioner's estate is provided for under section 8 of the Bankruptcy Act which provides that the estate of the petitioner will be vested in the official receiver who is constituted a receiver of under section 8 of the Bankruptcy Act. Lastly a receiving order shall be advertised as prescribed by section 12 of the Bankruptcy Act which provides as follows:

“12. Advertisement of a receiving order

Notice of every receiving order, stating the name, residential and business addresses and description of the debtor, the date of the order, the court by which the order is made and the date of the petition, shall be gazetted in the prescribed manner.”

Secondly the petitioner prays for an order of stay of proceedings under section 10 of the Bankruptcy Act. Section 10 of the Bankruptcy Act gives court discretion to stay any action,

execution or legal proceedings against the person or property of the petitioner. Learned counsel prays for stay of any proceedings but no evidence of any legal action, execution or legal proceedings has been attached to the petition. Under section 10 a petition for stay of proceedings or execution can be made in the court in which such proceedings have been commenced or in a court in which bankruptcy proceedings have been instituted. Because there is no evidence attached to the petition itself, it is improper to issue an order for stay of proceedings or execution which may be ongoing in other courts but of which there is no evidence. Section 10 of the Bankruptcy Act permits the petitioner to apply to the court in which such action, execution or legal proceedings has been brought and thereby notify the court about the presentation of this petition, the issuance of receiving order and appointment of the Official Receiver. In the circumstances and in order to preserve the right of hearing of any other parties who may have brought proceedings, the prayer for stay of proceedings is declined. There is no evidence of any urgency and therefore let the petitioner, if he so wishes file his application for stay of proceedings or execution in the court where those proceedings are pending if at all. This will give opportunity to the respondents to the application to be heard if they so wish. The costs of this petition shall be in the cause of the administration of the estate of the petitioner.

Ruling delivered in open court on the 15th of March 2013

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Charles Okuni: Court Clerk

No parties present.

Christopher Madrama Izama

Judge

15th of March 2013