



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-BM-0003-2023

IN THE MATTER OF A DEBTOR'S PETITION FOR INDIVIDUAL BANKRUPTCY
AND
IN THE MATTER OF A PETITION FOR A RECEIVING ORDER
BY KYOZAIRE JOYCE (DEBTOR)

Before: Hon. Justice Nshimye Allan Paul M.

RULING

REPRESENTATION

The Petitioner was represented by Advocate Bwengye Deusdedit from Mubiru & Aruho Associated Advocates.

BACKGROUND

This petition was instituted under Sections 20(1) & (2), 3(1)(a) & (b), (2), 4 and 27 of the Insolvency Act 2011, and Regulations 7, 8 & 10 of the Insolvency Regulations 2013, wherein the petitioner requests this Court to adjudge her bankrupt, and issue a receiving order against her estate.

The petitioner Kyozaire Joyce avers in the supporting affidavit that she is unable to pay fourteen (14) debts owed to 12 creditors worth at least UGX 70,000,000/= (Uganda Shillings Seventy Million only) (see annexures "C1" to "N"), and that she has never been declared bankrupt before. She attached a statement of affairs indicating *inter alia* that she has 8 dependants, has earned only UGX 500,000/= in the last 12 months, that she was operating a retail shop business in Kakiika, Mbarara City whose insolvency was caused by lack of sufficient initial working capital, the same having been consumed by her family's needs during the COVID-19 national lockdown.

She added that despite selling off her land at Rwobuyenje cell, Kakiika Ward/Division, Mbarara city to pay off her debts, that could not suffice and she has since unsuccessfully used up all her assets and liquidated amounts to service debts. She further averred that she does not have any movable or immovable assets which can be attached to meet the numerous debts. She pointed out that

none of her debtors is secured and prayed for this Court's intervention to enable her to organise her business affairs and avoid being imprisoned by the creditors. All the 12 creditors and the Official Receiver at Uganda Registration Services Bureau were served with this petition.

DETERMINATION

I have perused and considered the petition together with its supporting affidavit. This matter before Court is a form of insolvency called "individual insolvency" as categorised under **Part III of the Insolvency Act No.8 of 2011.**

Section 20(1) of the Insolvency Act 2011.

In principle an individual who is a debtor may petition the court for bankruptcy as is provided for in Section 20 (1) & (2) of the Insolvency Act and Regulation 7 (a) &(b) of the Insolvency Regulations. The law above provides for the basis of the petition, as; in circumstances when the debtor fails to satisfy an statutory demand as defined in Section 4 of the Insolvency Act 2011, or when the debtor is making an allegation that that they are unable to pay debts.

A debtor petitioning for bankruptcy is required by law to adhere to the following;

1. The petitioner, that is a debtor, shall file a statement of his or her affairs as shown in Form 7 in Schedule 1 of the Insolvency Regulations verified by an affidavit along with his or her petition (see Section 21 (1) of the Insolvency Act 2011 and Regulation 21 of the Insolvency Regulations 2013)
2. The debtors petition shall be supported by an affidavit sworn by the individual debtor (see Regulation 10 of the Insolvency regulations 2013)
3. The debtors Petition shall be served on every known creditor of the debtor (see Regulation 11 of the Insolvency Regulations 2013)
4. A debtor shall within seven working days after filing the petition give public notice of the petition in the format provided in form 4 in schedule 1 of the Insolvency regulations (see Regulation 13 of the Insolvency regulations 2013)

Once a debtor's petition complies with the law in the Insolvency Act and regulations stated above, the Court shall direct a public examination to be held on a day appointed by the court and the debtor shall attend on that day and be publicly examined on his or her affairs, dealings, and property as is provided in section 22 of the Insolvency Act.

The order for public examination of the debtor when issued by court is served by the petitioner on the official receiver, giving at least fourteen working days' notice of the public examinationn (see regulation 22 of the Insolvency Regulation 2013 and Form 8 of schedule 1 of the Insolvency Regulation)

I have perused the court file and find that the petitioner put a photocopy of what looks like a publication called "Eihwa," of 5th to 11th September 2023, bearing an advert of a notice of a bankruptcy petition with the names of the petitioner mentioned. In my analysis, I made the following observations.

1. I cannot tell from the photocopy, if it is a newspaper or not, if it is a newspaper is it of wide circulation or not, no original paper bearing the advert has been put on court record.
2. The advert does not bear the bankruptcy number at the High Court at Mbarara. It basically doesn't have sufficient information for any person who sees it to understand.

In my analysis I find that the above observations would make it difficult for any person who wishes to give notice to the court of their intention to appear to be heard on the petition by an individual as is provided in Regulation 15 of the insolvency Regulations. The failure to state the particulars of the bankruptcy petition number in the public notice defeats the purpose of giving notice to all that would have appeared. In my opinion the petitioner has not complied with Regulation 13 of the Insolvency regulations 2013. I accordingly dismiss this petition.

The petitioner is at liberty to file another petition complying with the law as stated above. It is also advisable to put the public notice of the petition in a newspaper of wide circulation that is in a language of court, which is English.

This petition is dismissed, with no order as to costs.


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NSHIMYE ALLAN PAUL M.

JUDGE

29-01-2024