

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
IN THE MATTER OF THE INSOLVENCY ACT No. 14 OF 2011
& SI No. 36 OF 2013
AND
IN THE MATTER OF BANKRUPTCY PETITION BY JOSEPH MUBIRU
AND
IN THE MATTER OF MISCELLANEOUS APPLICATION No. 274 OF 2017
(Arising Out Of Bankruptcy Petition No. 01 of 2017)

BEFORE HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for leave of court for the applicant to file a fresh Bankruptcy Petition after court dismissed the first Petition No. 1 of 2014.

The applicant claims that:

- (i) *he has sufficient cause for his non-appearance when the Petition was called for hearing;*
- (ii) *he is interested in pursuing his Petition up to the final determination;*
- (iii) *That his lawyer Ndiwalana Yunus who was personally handling the Petition was appointed as a Magistrate and could not pursue the matter;*

That he discovered that MA 311 of 2015 had been dismissed when he came to court for information regarding the matter.

That the applicant had been arrested by some of his debtors hence his failure to appear in court. Under Regulations, where a Petitioner does not appear at the hearing of the Petition the court may dismiss the Petition for want of prosecution and no new Petition against the same debtor

shall be presented by the petitioner in respect of the same debt without leave of court from the record of proceedings it is apparent that the applicant and his counsel did not appear when MA 311 of 2015 was called for hearing. That application was for leave to file a fresh Petition. When the matter was called on 27/6/2016, the applicant was in court. But because his lawyer was not in court, the matter was adjourned to 8/9/2016. On that day neither the applicant nor the lawyers were in court. This prompted court to dismiss the application for want of proceedings. Instead of applying to set aside the dismissal of MA 311 of 2015, the applicant has filed a fresh application. What was dismissed was not the Petition but an application to file a fresh Petition.

Regarding the reasons for his absence, the applicant has sufficiently proved that he was prevented by sufficient cause from appearing in court. He was present when the application was fixed for hearing but he kept away. I also note that the Bankruptcy Petition was first filed as long ago as 2014. Nevertheless, no serious steps have been taken by the applicant to have the matter disposed of. The failure to attend court and take steps to have the Petition heard amounts to abuse of court process.

This application is dismissed.

Stephen Musota

J U D G E

21.11.2017

DRAFT