

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[COMMERCIAL DIVISION]  
BANKRUPTCY PETITION NO. 008 OF 2018  
THE INSOLVENCY ACT OF 2011  
THE INSOLVENCY REGULATIONS

AND

IN THE MATTER OF SERU ELAIS, A DEBTOR

BEFORE: HON. MR JUSTICE RICHARD WABWIRE WEJULI  
JUDGEMENT

This ruling is in respect of a Bankruptcy Petition lodged under section 20(1) of the Insolvency Act 2011 and Regulations 8 and 10 of the Insolvency Regulations SI 36 of 2013.

In the Petition and Affidavit in support of the Petition, the Petitioner states and swears that she is unable to pay her debts and request that the court declares her bankrupt. She attaches a Statement of her Affairs to the Petition.

In her Affidavit and in her Statement of Affairs, she lists 13 creditors to whom she is indebted in the sum of Ugx 1,706,713,273 and USD 37,320.



The Petitioner submitted that three (3) of her thirteen (13) Creditors  
25 have obtained judgement against her and are pursuing her for  
execution of the Judgements as follows:

- a. Deepa Verma Jivram obtained judgement to the tune of UGX  
468,000,000/ (Four Hundred Sixty Eight Million only) vide  
**HCCS 0052 of 2018 Deepa Verma Jivram V Seru Elias.**
  - 30 b. Yetu (U) Limited obtained judgement for UGX 103,713,273/  
(One Hundred Three Million Seven Hundred Thirteen Thousand  
Two Hundred Seventy Three only) vide **HCCS 0710 of 2017  
Yetu (U) Limited V Seru Elias.**
  - c. MTB Co. Limited obtained judgement for UGX 245,779,115/  
35 (Two Hundred Forty Five Million Seven Hundred Seventy Nine  
Thousand One Hundred Fifteen) vide HCCS 0762 of 2017 Yetu  
(U) Limited V Seru Elias t/a Seru & Company for which the  
Petitioner was remanded in civil prison for 6 months and for  
which the judgment decree remains outstanding to date.
- 40 The Petitioner stated that she does not have substantially valuable  
assets to apply towards the payment of her debts. She indicates that  
she has no cash, shares, or real estate at all. She also indicated in  
the Statement of her Affairs that she had no income over the past 12  
months prior to the time when it was signed and did expect to receive  
45 Shs 40,000,000 from Deepa Verma in the next 12 months thereafter.  
She however testified in cross examination that Depaa had since paid  
this business debt.

At the hearing, the Petitioner was represented by Counsel Monica Kyemazima while the creditors were represented by Counsel  
50 Raymond Ndyagambaki.

A public examination of the Petitioner was conducted in court.

Both parties filed written submissions in which 4 issues were raised and argued to determine the Petition, namely;

1. Whether the Petitioner is unable to pay her debts
- 55 2. Whether in the circumstances the Court ought to grant an Order of Bankruptcy
3. Whether the Petitioner has any property to be administered by a Trustee in Bankruptcy
4. Whether the opposing Creditors have any remedies in the  
60 circumstances

Counsel for the Petitioner submitted that the Petitioners circumstances fitted the circumstances of Section 3(1) of the insolvency Act by which inability to pay is presumed.

65 She submitted that the Petitioner's creditors were actively pursuing her for execution of judgment debts to the tune of over Ugx 800 million that remain outstanding, that execution of judgment in respect of HCCS 762/2017 for Shs 245,779,115/= remains unsatisfied and that a warrant of arrest obtained by Yetu (U) Ltd remains unsatisfied as well.



70 She further submitted that whereas the Creditors contend in their Affidavit in opposition that they have identified properties belonging to the Petitioner and searches were being conducted to be presented at hearing of the Petition, no Search Reports were presented at the hearing of the Petition to prove the existence of the said properties.

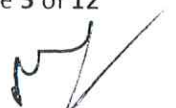
75 She submitted that the Petition was properly before court. That the Creditors who expressed intention to oppose the Petition were given the opportunity to examine the Debtor on 4<sup>th</sup> February 2019 in compliance with Section 20 of the Insolvency Act. That the Petition was duly filed by the Petitioner together with a Statement of Affairs  
80 in compliance with Section 21 of the Act and as such the court should grant the Bankruptcy order sought.

In opposition to the Petition, the creditors agreed that they indeed held decrees against the Petitioner in Civil Suit No.52 of 2018 for UGX 506,960,630/= being inclusive of the decretal sum, interest and  
85 legal costs and Civil Suit No.710 of 2017 for Ugx.153, 612,695/= being decretal sum, interest and legal costs.

They however contended that the Petitioner has substantial assets and is able to settle her debts, that it is not true that she is unable to settle her debts, that the Petitions has therefore been brought in  
90 bad faith and is only intended to deprive the Creditor of the fruits of their judgments.

Counsel for the Respondent creditors submitted that the Petitioner contradicted herself and had made the following falsehoods during cross examination;

- 95 a. That Yetu (U) Limited partly executed against her and that all  
her properties were sold including cash of UGX.60,000,000/=  
(Uganda Shillings Sixty Million only) which she had kept in a  
3.2 litre flask that was taken away. That this fact was not stated  
in the Petition or the Statement of Affairs. The Respondents  
100 contend *that it is improbable that UGX. 60, 000,000/= (Uganda  
Shillings Sixty Million only) can fit in a 3.2 litre flask.*
- b. That her property in Najera was sold by Stanbic Bank to recover  
290,000,000/= sometime in 2017 and that the balance was  
used to pay off MTB Co. Ltd. The Respondents point out that  
105 these facts are missing in her Statement of Affairs or affidavit.
- c. That she had no spouse and that the father of the children  
abandoned her, yet in paragraph 4 of the Statement of Affairs  
she confirms that she lives with her spouse, and on cross  
examination she confirmed that the same father is the one  
110 paying school fees for her two children.
- d. That she has no child support yet on cross examination she  
confirmed that her partner pays the children's school fees.
- e. That she has a heart problem but adduced no evidence  
whatsoever of her illness.
- 115 f. That she was sent to Civil prison by MTB Co Limited (Reuben)  
but availed no evidence or proof of the same.
- g. That she has no friends or relatives she could rely on despite  
her age of 50 years and despite having been in business for over  
20 years.



120 h. That she owned property in Najjera but the same property had  
been sold in 2017 according to her testimony yet paragraph 28  
of her Statement of Affairs she claims there has been no transfer  
or sale of her assets in the last 36 months.

In Rejoinder to the creditors' averments, the Petitioner reiterated the  
125 position that the various judgment debts have not been satisfied.  
Most specifically in respect of the two judgments i.e. **HCCS No. 710  
of 2017 Yetu (U) Limited Vs Seru Elias** in which the contents of the  
Petitioners shop were attached and **HCCS No. 762 of 2017 MTB Co.  
Ltd & Mutebi Gerald Vs Seru Elias T/A Seru Elias** where she was  
130 committed to civil prison for six months, she contends that both  
executions issued were returned unsatisfied as evidenced by the fact  
that Yetu (U) Limited for one is a party to these proceedings.

That the creditors did not dispute the fact that execution issued and  
was not satisfied.

135 That the Creditors have not adduced any evidence of bad faith as  
alleged. She cited the case of Re AI-Moody (A debtor) B.C No.4 1989  
(retrieved from <http://kenyalaw.org/caselaw/cases/view/7715/>)  
the Kenyan High court stated that;

140 *"..... But the mere presentation of a Petition by the debtor to evade  
a committal order is not an abuse of the process of the court and the  
debtor's Petition is a proper case which should be allowed...the debtor  
was entitled to use the machinery of the Bankruptcy Act for his own  
purpose so as to shield himself from further liability to committal or  
other harassment"*

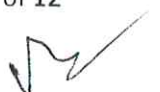
145 Regarding the issue of alleged controversies and falsehoods raised by  
Counsel for the Respondent creditors, Counsel for the Petitioner  
submitted that failure to indicate that Yetu (U) Limited partly  
executed, was because, the Petitioner in compiling the list of debtors  
indicated all debts as she knew them. That the execution by Yetu (U)  
150 Limited took place when she was in civil prison and as such she did  
not have all the material facts of the value of the inventory taken.

She contended that UGX 60,000,000/ can fit-in a 3.2 liter flask with  
the vacuum removed especially if they are UGX 50,000 notes. She  
however did not say in what denominations the money that is said to  
155 have been taken was in.

That the property in Najjera was sold by Stanbic Bank in 2017 to  
recover Shs 290 million and the balance used to pay another Creditor  
not indicated in the Statement of Affairs or affidavits, long before the  
Petition was filed and both Creditors who benefitted from the sale  
160 were paid off in full. That at the time of filing the Petition it did not  
seem relevant to highlight creditors already paid off in full.

That the Petitioner rightly indicated that she does not have a spouse  
but has 2 children whose school dues are met by their father due to  
her financial troubles. That meeting the children's school dues in a  
165 time of need does not amount to "expected financial support in the  
form of child support" as envisaged by section 6 of the Statement of  
Affairs.

That the Petitioner's ill health and the procedures undergone since  
her release from civil prison are not directly related to the current



170 proceedings except to show that she is currently unable to work and  
earn an income from which she can pay her debts. The said  
conditions do not in any way vitiate her claims in the Petition or the  
fact that she is unable to pay her debts.

175 That not having answered Section 28 of the Statement of Affairs was  
a clerical oversight on the part of counsel and not a falsehood on the  
Petitioners part which mistake should not be visited on the Petitioner.  
That she truthfully answered all questions put to her regarding the  
subject in examination.

### **Ruling**

180 I have carefully considered the Petition, the affidavits in support and  
opposition and attachments thereto including the Statement of  
Affairs together with the submissions by both counsel in addressing  
the issues framed.

185 During cross examination, the Petitioner brought to the fore  
significant inconsistencies that potentially undermine the cogency  
of her evidence and her own credibility as a witness. The  
submissions by Counsel for the Respondent raised some issues of  
law which I will address first, as they could determine the fate of  
the Petition.

190 In her testimony during cross examination, the Petitioner stated  
that she had a house in Najera which she sold off to one of her  
creditors called Reuben in August 2017. She however had  
indicated at Paragraph 28 of the Statement of Affairs that she had



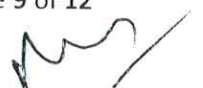


not sold, transferred or given away any assets worth more than Shs  
195 1,000,000 in the last 5 years. The 5 years would start running  
backwards from the 6<sup>th</sup> June 2018 when the Statement was  
stamped by the officer in charge Uganda prison.

Concealment or non-disclosure of the disposal of property at Najera  
is both an unlawful irregularity as well as a falsehood. Much as  
200 counsel for the Petitioner says that they did not deem it necessary  
to disclose creditors who had been settled prior to the Petition, with  
due respect to counsel for the Respondent, her response does not  
resolve the legal requirement nor does it satisfactorily explain the  
reason for the omission or concealment.

205 The requirement of the law under Paragraph 28 of the Statement  
of Affairs is to list the properties disposed of and not the creditors  
settled. It is therefore immaterial that the Petitioner settled some  
creditors prior to the date of the Petition. What is in issue is  
whether within a period of 5 years prior to the Petition the  
210 Petitioner had sold off or transferred any assets worth over Shs 1  
million, which in this instance was the case. The time when she  
sold the property was within the 5 years period. She did not make  
the disclosure, she indicated that there had been no such disposal.

The fact of disposal is not denied, save for submissions in evidence  
215 from the Bar by Counsel for the Petitioner that the entry indicating  
that there had been no asset disposal was done in error by Counsel  
and that therefore the implications of the anomaly should not be



occasioned upon the Petitioner. I respectfully disagree with  
Counsel and hold the Petitioner personally liable for the disclosures  
220 in the Statement of Affairs including concealment or non-disclosure  
of the fact of disposal.

The other anomaly was in contravention of **Section 21(1) of the  
Insolvency Act** which requires that the Statement of Affairs is  
verified by affidavit. The Section provides that a debtor who  
225 contravenes the provision commits an offence and prescribes the  
sanctions for violation. The requirement is neither discretionary  
nor optional. The provision is couched in instructive language by  
use of the words “....shall require ....”

The omission to verify the Statement of Affairs by Affidavit is in my  
230 view a fatal omission that renders the Statement of Affairs invalid.

Thirdly, is the omission by the Petitioner to serve a copy of the  
Statement of Affairs on the official receiver as required by section  
21(4). There is no evidence on record that the Statement of Affairs  
was ever served on the Official Receiver.

235 These omissions render the Petition unlawful and irregular and  
given the mandatory nature of the requirements, the anomalies  
cannot be cured by simply being explained away as Counsel for the  
Petitioner has attempted to do. Illegality once brought to the fore  
overrides any manner of pleadings – see- **Makula International  
240 Versus Cardinal Nsubuga Wamala 1983.**



In the event, there is neither justification nor premise upon which I should delve into the issues framed and argued by the Parties as the Statement of Affairs which is pivotal in informing the opinion of this court stands nullified.

245 The Petition fails and is dismissed.

I make no order as to costs.

Delivered this ..1..3..day of September, 2019.

250 Richard Wejuli Wabwire  
JUDGE

Present in Court:

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Richard Wejuli Wabwire  
JUDGE

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