

KENYA SCHOOL OF LAW

COUNCIL OF LEGAL EDUCATION

THE ADVOCATES TRAINING PROGRAMME

COMMERCIAL TRANSACTIONS

BANKRUPTCY PROCEEDINGS
by Rautta-Athiambo

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1

INTRODUCTION

- Bankruptcy proceedings are commenced by presentation to court of a bankruptcy petition.
- It requests for making of a receiving order to be made in respect of the debtor's property.
- Petition may be presented by either debtor himself or by a creditor.
- Petition must be based on alleged act of bankruptcy.
- These acts are statutory tests of insolvency of a debtor.
- The act of bankruptcy must have occurred within three months before the presentation of the petition.

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2

Introduction...contd.

- On hearing of petition, the court may dismiss the application or agree to make a receiving order.
- Receiving order does not make the debtor bankrupt.
- It places property of debtor in safe custody, pending determination of petition.
- In a creditors' petition, a first meeting of creditors is then convened and held.
- If debtor has submitted a composition or scheme of arrangement, this will be deliberated upon at this first meeting.

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3

Introduction...contd.

- If the composition or scheme is not accepted by creditors, application is made to adjudicate the debtor bankrupt.
- The court then makes an adjudication order.
- His property is vested in the trustee in bankruptcy (TIB).
- Task of TIB is to collect in the debtor's property and, eventually, distribute among creditors who will have proved their debts.

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4

Introduction...contd.

- The bankrupt must then submit to public examination.
- Thereafter the bankrupt may apply for his discharge.
- Discharge releases the bankrupt from certain debts - note exceptions - provable in bankruptcy.
- Debtor is thus freed from most disabilities imposed by the bankruptcy.

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5

Introduction...contd.

Authority to present a petition

- The debtor against himself; or
- A creditor.
- Such debtor may be:
 - An individual person who sign by himself;
 - Partners, to sign by partners in the name of firm;
 - Mentally disordered persons (by guardian or appointed manager of his estate); or
 - Infants, (through next of friend).

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6

ACTS OF BANKRUPTCY

- Acts of bankruptcy set out by statute: s.3.
 - a. Making a conveyance or assignment to trustee for benefit of creditors generally;
 - b. Making fraudulent conveyance, gift, delivery or transfer of property;
 - c. Making any conveyance or transfer etc. which would be void as fraudulent preference;
 - d. Departing out of Kenya or being out of Kenya, remaining out of Kenya or departing from his dwelling-house or otherwise absenting himself or beginning to keep house, all with intent to delay his creditors;

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7

Acts of bankruptcy...contd.

- e. If execution has been levied by seizure of his goods, and the goods have either been sold or held by the bailiff for 21 days;
- f. If he files in court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;
- g. Failing to comply with a bankruptcy notice; or
- h. Giving notice to his creditors of his suspension of payment of his debts.

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8

COMMENCEMENT

There are three (3) ways to commence bankruptcy proceedings:

- (a) A debtor can present the petition himself.
- (b) Creditors or a creditor.
- (c) The Court.

Section 102, Bankruptcy Act suggests that the court can move on its own motion, where application is made for committal of a judgment-debtor.

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9

Commencement...contd.

Who may be made bankrupt

- Any debtor who, at the time of commission of an act of bankruptcy:
 - is domiciled in Kenya; or
 - who, within one year before the date of presentation of the petition-
 - has ordinarily resided; or
 - had a dwelling-house or place of business; or
 - has carried on business in Kenya personally or by an agent or manager; or
 - has been a member of a firm/partnership carrying on business in Kenya by agent or manager;

See s. 6 (1) of the Act.

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10

Commencement...contd.

- NB: Even if a person has ceased trading in Kenya, he will be deemed to be carrying on business until all his outstanding trading debts plus taxes are fully paid: see *Re Bird* [1962] 2 All E.R. 406.
- Where a deed of arrangement has been executed and the creditor is prohibited by law relating to deeds of arrangement, he cannot present a petition founded on the execution of the deed.
- Nor can he do so on the basis of an act committed in the course or for purposes of proceedings preliminary to the execution of the deed.

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11

Commencement...contd.

Conditions precedent

- The conditions on which a bankruptcy petition may be presented are as follows:-
 - Debt owing of at least Kshs. 1,000/= to petitioning creditors.
 - Debt must have existed as a liquidated sum - fixed sum or one capable of being computed with certainty - at the date of the act of bankruptcy and payable either immediately or at some future date.
 - An act of bankruptcy (see s. 3(1), Act) committed within 3 months before presentation of petition.

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12

Commencement...contd.

Debtor's petition

- A debtor may present a bankruptcy petition against himself.
- The purpose is to relieve himself of burden of his property and to secure fresh economic start by discharge from his financial obligations.
- Petition must state that he is unable to pay his debts.
- Petition itself constitutes act of bankruptcy.
- He does not need to have filed a declaration of his inability to pay his debts: see section 8 of the Act.

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13

Commencement...contd.

- The debtor's petition must be prepared in the prescribed form: Rules 105 & 106 Bankruptcy Rules & Form No. 3.
- He must file a statement of affairs in Form 31: see proviso s. 8.
- If he does not intend to put forward any proposal for a composition or scheme of arrangement, he should ask in his petition that he be adjudged bankrupt.
- He should insert on the form, his name, description and date of the petition and his signature should be attested.

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14

Commencement...contd.

- Every petition must be attested and witnessed, if in Kenya, by an Advocate, a Justice of the Peace, Official Receiver or the Registrar of the High Court.
- When attested outside Kenya, it must be witnessed by a judge, magistrate or a notary public, among others: rule 107 Bankruptcy Rules.

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15

Commencement...contd.

- Fee on presentation of the petition to Official Receiver:
 - (a) by one debtor..... Kshs. 700/=; or,
 - (b) in a joint petition by two or more debtors, carrying on business as partners, Kshs. 1,000/=, and
 - (c) any further sum required by the receiver for fees plus expenses.
- See Rule 108, B.R.

-The court shall thereupon proceed to make receiving order

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16

Commencement...contd.

NB: These observations apply to all petitions:

1. A debt founded on an illegal consideration will not support a petition.
2. Once presented, the petition cannot be withdrawn without leave of court.
3. If petition is by a firm, it must contain full names of all partners plus a signed affidavit of a partner.

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17

Commencement...contd.

Creditors' petition

- Any person who is entitled to enforce payment of a debt at law or in equity may petition as a creditor.
- NB: The circumstances under which a creditor may present a bankruptcy petition are already discussed above.
- A creditor is not entitled to present a bankruptcy petition founded on the execution of a deed of arrangement (which has been executed) or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed: see section 6 (1) of the Act.

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18

Commencement...contd.

- If petitioner holds security, he must state whether he intends to give up security for the benefit of other creditors in the event of the debtor being adjudged bankrupt.
- Alternatively, he may give an estimate of the value of his security, in which case he may petition for the balance: see s. 6(2) of the Act.
- Creditor should take care not to under-estimate value of security; he may be bound by it to his disadvantage.

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19

Commencement...contd.

Form and content of petition:

- Creditor's petition is presented in Form 9
- It is verified by affidavit of the creditors or alternatively by affidavit of a person having knowledge of the facts - Form 11 or 12 .
- Two or more creditors may present petition: BR 112.
- If the creditor cannot verify all the facts contained in his petition he must file in support of the petition on affidavit of some other persons who is conversant with the facts: rule 111, B.R.
- Petition should be dated, signed and attested.
- Before presentation a deposit of Kshs. 1,000/= has to be paid to Official Receiver and any further sum.

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20

Commencement...contd.

- If the Petition is in order copies are signed, sealed, a date set by Registrar and issued to the petitioner.
- A sealed copy of the creditor's petition shall be personally served on the debtor.
- Proof of service of the petition must be by affidavit with a copy of the petition attached.
- A creditor's Petition cannot be withdrawn after being presented without leave of court: section 7(7), BA.

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21

Commencement...contd.

- In the case of a debtor's petition the court must make a receiving order.
- But a creditor's petition will proceed for hearing after 8 days from the date of service.
- The Registrar of the High Court will appoint the time and place of the hearing in chambers.
- Personal attendance of creditors is required unless dispensed with.
- If the debtor intends to oppose the making of the receiving order, he should file a notice with the Registrar specifying the statements he will dispute/deny 3 days before the hearing.

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22

Commencement...contd.

- Under section 7, proof of debt, service of petition and act of bankruptcy required.
- If such proof is not given, the petition may be dismissed.
- If proof is satisfactory then a receiving order is made.

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23

Commencement...contd.

Petition will be dismissed if:

- The court is satisfied that debtor can pay his debts.
- Receiving order should not be made because debtor has no assets.
- Petition presented oppressively - to pressurize debtor.
- If for some other cause the receiving order should not be made.

NB: Even if one receiving order has been issued another can follow.

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24

Proceedings may be stayed if:

- The act of bankruptcy is non-compliant with a bankruptcy notice, e.g. where an appeal is pending.
- If debtor denies debt, proceedings are stayed until question of debt is determined.
- An Interim Receiver may be appointed by the Court after presentation of the petition and before a receiving order is made: see section 10 of the act.
- NB:
 1. The Court may do so if it is shown that such appointment is necessary to protect the debtor's estate.
 2. The Interim Receiver may then take immediate possession of the whole or part of the debtor's property.

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25

RECEIVING ORDER

(a) Definition

A receiving order is an order of the bankruptcy court placing the debtors estate under its custody and control through its officer, the Official Receiver. It is made for the protection of the estate.

- There shall be prepared 3 copies, signed and sealed.
- Two copies are sent to the Official Receiver (OR).
- OR causes one copy to be served on the debtor.
- It is then advertised in the Kenya Gazette.

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26

Receiving order...contd.

(b) Effect of receiving order

- Official Receiver is constituted receiver of the debtor's property.
- No creditor who has a debt provable in bankruptcy has a remedy over the debtor's property except as provided in the Act.
- No creditor as in (ii) above can commence legal proceedings to recover to debt except with leave of the court. See section 9, of the act.

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27

Receiving order...contd.

(c) Content

- When a receiving order is made on a creditor's petition it must be stated therein-
 - the nature;
 - date(s) of act(s) of bankruptcy; and
 - a notice to debtor to attend on the Official Receiver upon service, at the venue stated.

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28

Receiving order...contd.

(d) On Debtor's Petition

- The Receiving Order is made as a matter of course where the debtor files the petition; BR 125 (1).
 - This should, however, only be after the statement of affairs is filed with the OR: see s.16 BA.
- The Court can refuse to make Receiving Order if -
- the debtor owns absolutely no assets.
 - the Court thinks it ought not to have made it because it is an abuse of its process e.g. where it transpires that the debtor had presented a petition fraudulently to escape debts.

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28

Receiving order...contd.

(e) On Creditor's Petition

- The Court can rescind a Receiving Order if -
 - it is satisfied that the debtor can pay his debts;
 - it thinks it ought not to make it;
 - a composition or scheme of arrangement is accepted.
- Application can only be heard if notice of intention and affidavit have been served on the OR who files a report on the debtors conduct and affairs.

NB: Creditors or TIBs in bankruptcy can object to a rescission.

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30

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ADJUDICATION ORDER

- At the time of making a receiving order or thereafter the court may adjudge the debtor bankrupt.
- The judgment or decision of the court which declares a debtor bankrupt is known as an adjudication order.
- The court may adjudge the debtor bankrupt in the following circumstances:
 - i. On the application of the debtor himself, orally or without notice (B.R. 180); or
 - ii. When a quorum of creditors do not attend at the time and place appointed for the first meeting (B. R. 181); or

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31

Adjudication order...contd.

- iii. Where the receiver has satisfied the court that the debtor has absconded, *ibid.*; or
- iv. Where the receiver satisfies the court that the debtor does not intend to propose a composition or scheme, *ibid.*; or
- v. Where a composition or scheme is not accepted by the creditors at the first meeting or at the adjournment of such a meeting (B.R. 182); or

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32

Adjudication order...contd.

- vi. Where public examination of the debtor is adjourned sine die, and the debtor had not previously been adjudged bankrupt (B.R. 183);
- vii. If the debtor fails without reasonable cause to submit his statement of affairs, s. 16(3), B.A.; or
- viii. If a composition or scheme is made but default is made in payment of installment, s.18(16), B.A.; or

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33

Adjudication order...contd.

- ix. If , the composition or scheme cannot, in consequence of any legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors or debtor, *ibid.*; or
- x. If approval of the court was obtained by fraud, *ibid.*
- xi. If the creditors at their first meeting or at any adjournment thereof resolve by ordinary resolution that the debtor be made bankrupt; s. 20(1), B.A.; or
- xii. If they pass no resolution, *ibid.*; or

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34

court, *ibid.*

Adjudication order...contd.

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35

Adjudication order...contd.

Effect of adjudication order

- Upon the making of adjudication order-
 - the debtor becomes bankrupt;
 - all his property is vested in his TIB in bankruptcy; and
 - such property becomes divisible among his creditors.

The court must at the same time specify on the adjudication order after how long the debtor may apply for his discharge: s. 20, BA.

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36

Adjudication order...contd.

- Notice of the order to be advertised and gazetted: BR 185.
- Similarly, if the order is subsequently annulled, the registrar is required to forthwith cause the annulment to be gazetted: B. R. 186.

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37

TIB IN BANKRUPTCY

- The TIB in bankruptcy, who must be "a fit person", may be appointed-
 - a) By ordinary resolution of the creditors, usually at their first meeting; or
 - b) Where the power is delegated by the creditors, by a committee of inspection, appointed by the creditors to superintend the administration of the bankrupt's property by the TIB.

The Official receiver may be appointed a TIB in bankruptcy, in which case there will be no committee of inspection: s. 21, B.A.

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38

TIB in bankruptcy...contd.

Duties

1. To get possession of all the debtor's property and to make the most of available assets;
2. To obey instructions of creditors and committee of inspection;
3. To exhibit utmost good faith;
4. To summon meetings of creditors on requisition or direction;
5. To convert assets into money as soon as possible;
6. To keep proper accounts.

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39

TIB in bankruptcy...contd.

Powers

1. On his own authority, the TIB may:
 - a) Sell all or any part of property;
 - b) Give receipts for money;
 - c) Exercise all powers incidental to his duties;
 - d) Draw and prove for a dividend owing to his bankrupt in any other bankruptcy.

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40

TIB in bankruptcy...contd.

Powers...contd.

2. With the permission of creditors or committee:
 - a) Carry on the bankrupt's business;
 - b) Bring or defend any action affecting property;
 - c) Employ an advocate or other agent;
 - d) Mortgage or pledge any of the property;

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41

TIB in bankruptcy...contd.

Powers...contd.

- e) Accept money payable at a future date on sale of any of the property;
- f) Agree a compromise of any claim by or against the bankrupt;
- g) Refer disputes to arbitration;
- h) Appoint the bankrupt to manage his own property; and
- i) Make an allowance to the bankrupt for the support of himself and his family.

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42

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DISTRIBUTION OF A BANKRUPT'S PROPERTY

Property available for distribution

a) Property Available to the TIB:

- i. All such property belonging to the debtor or vested in him at the commencement of bankruptcy; or
- ii. Property acquired and devolved in him before discharge but after commencement; or
- iii. Goods in bankrupt's reputed ownership*; or

**Discussed separately below.*

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43

Distribution of property...contd.

- iv. Property transferred gratuitously by the bankrupt to another person, e.g. voluntary settlements made; or
- v. Property used by bankrupt to give fraudulent preference* to any creditor over others, within 6 months of his being declared bankrupt: s.43(i), B.A.

**See below.*

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44

Distribution of property...contd.

Doctrine of Reputed Ownership

- All goods being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, such goods are deemed to be the property of the bankrupt: s.43(iii) B.A.

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45

Distribution of property...contd.

Doctrine of Reputed Ownership...contd.

- The object of the doctrine of reputed ownership is to prevent deceit by a trader from the visible possession of property, which he is not entitled to.
- Goods include all chattels personal, but not choses in action.
- Where goods are in possession of bankrupt's agent, doctrine applies.

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46

Distribution of property...contd.

Doctrine of Reputed Ownership...contd.

- Doctrine may be defeated by a trade custom pursuant to which, say, hotel furniture is customarily hired out: see *Re Parker* (1885).
- Also, where owner of goods does not know they are used in the bankrupt's business, doctrine does not apply.

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47

Distribution of property...contd.

To qualify as Fraudulent Preference-

- ✓ There must be actual intention to prefer one creditor over another;
- ✓ Transfer by debtor must be voluntary;
- ✓ Payment must not have been made to revive a statute-barred debt;
- ✓ Payment must not have been made by trader in order to keep his business going, even if he knew he was insolvent.

In each case burden of proof is on TIB.

In respect of last two, see *Re Clay & Sons* (1895).

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48

Distribution of property...contd.

(b) Property Not Available

- The following property is not available to the TIB:
 - i. Any property held by the debtor on trust; or
 - ii. debtors tools of trade and the necessary wearing apparel and bedding for himself and his immediate family members, not exceeding Kshs.500/- in the whole (although, may be increased by court to any value not exceeding Kshs.1,000/- in the whole.s.43(a) and (b), B.A.);

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49

Distribution of property...contd.

- iii. Personal earnings, not exceeding amount necessary to maintain the bankrupt and his family; or
- iv. Rights of action to sue for damages for bodily harm, or for injury to credit or reputation.
NB: Rights of action for injuries to property vest in the TIB; or
- v. Interests in property which are determinable on bankruptcy; or

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50

Distribution of property...contd.

- vi. The benefits of contracts requiring personal skill; or
- vii. Old age pensions and benefits under NSSF Act.

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51

Distribution of a bankrupt's property...contd.

Duties of Debtor as to discovery and realization

- Every debtor shall-
 - a) Give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively;
 - b) Submit to such examination in respect of his property or his creditors;
 - c) Attend such other meeting of his creditors;

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52

Distribution of a bankrupt's property...contd.

Duties of Debtor...contd.

- d) wait at such times on the official receiver, special manager or TIB;
- e) execute such powers of attorney, conveyances, deeds and instruments;
- f) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the official receiver, special manager or TIB, or as may be prescribed, or as may be directed by the court;

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53

Distribution of a bankrupts' property...contd.

Duties of Debtor ...contd.

- g) do all such acts and things by any special order or orders made in reference to any particular case or made on the occasion of any special application by the official receiver, special manager or TIB or any creditor or person interested;
- h) if adjudged bankrupt, aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds amongst his creditors: S.24,B.A.

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54

Distribution of a bankrupt's property...contd.

Payment of Debts

1) Proof of debts

- Provisions relating to this are to be found in the Second Schedule to the BA.
- Any creditor who wishes to make a claim against the estate of the bankrupt must prove his debt to the satisfaction of the TIB.
- This is done by sending through the post in a prepaid letter to the official receiver or TIB.

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55

Distribution of a bankrupt's property...contd.

Proof of debts...contd.

- The proof must be accompanied by an affidavit verifying the debt.
- The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which they can be substantiated.
- The official receiver or TIB may at any time call for the production of the vouchers.

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56

Distribution of a bankrupt's property...contd.

2) Provable Debts

- All debts and liabilities present or future certain or contingent to which the debtor is subject at the date of the receiving order or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order are deemed to be debts provable in bankruptcy: S.35 (3),B.A.

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57

Distribution of a bankrupt's property...contd.

Provable Debts...contd.

- NB: A contingent liability is one which at the date of proof is not certain to arise.
- It is dependent upon the happening of some event which may or may not take place.
- Subject to certain rules a creditor may prove for the full value of a contingent liability.
- TIB must assess its value and make allowance for it.

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58

Distribution of a bankrupt's property...contd.

Provable Debts...contd.

b) Periodical Payments:

- Where rent or other payment falls due at stated periods and the receiving order is made at any time other than any one of those periods the person entitled to the payment may prove for a proportionate part thereof, up to the date of the order as if payment accrued due from day to day: S. 19, BA .

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59

Distribution of a bankrupt's property...contd.

Provable Debts...contd.

- Interest on debts on debts is provable and payable: S. 36 B.A..

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60

Distribution of a bankrupt's property...contd.

3). Debts not provable

- The following debts are not provable in bankruptcy:
- a) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust are not provable in bankruptcy. S.35(1),B.A.
- Therefore claims arising out of a tort committed by the bankrupt cannot be proved unless the damages become liquidated by agreement or judgment before the dates of the receiving order.

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61

Distribution of a bankrupt's property...contd.

Debts not provable...contd.

- b) Debts incurred after notice of unavoidable act of bankruptcy under: s.35(2) B.A.
- c) Debts incurred after the date of the receiving order s.35(3) B.A.
- d) Unenforceable Debts: these are debts founded on an illegal or immoral consideration or statutes-barred debts
- e) Debts incapable of being estimated under s.35(6) B.A.

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62

Distribution of a bankrupt's property...contd.

Debts not provable...contd.

- f) Alimony and maintenance – the common law liability of a husband to maintain his wife is not a contractual liability and therefore does not constitute a provable debt.

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63

Distribution of a bankrupt's property...contd.

4) Priority of debts

- Once a debtor is adjudged bankrupt his property vests in TIB and is to be divided amongst his creditors.
- However, there are rules which govern the order of precedence of the debts. S.38 B.A.
- The order of priority is as follows:
 - a) Taxes due to the Government and any rates.
This only relate to those taxes and rates accrued within 1 year before the RO was made.

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64

Distribution of a bankrupt's property...contd.

Priority of debts...contd.

- b) Any rents due to the government for the last 5 years.
- c) Wages or salaries of the bankrupts' employees. This can only be claimed for a maximum of 4 months before making of the RO.
- d) Compensation due to any of the bankrupt's workmen

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65

Distribution of a bankrupt's property...contd.

- e) Amounts required to be paid by the bankrupt to the NSSF for 12 months before the making of the RO for the bankrupt's employees: s.38 B.A.
- The above debts rank equally between themselves and must be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions.
- After payment of the preferential claims the balance of the debtor's property will be utilized to discharge the other debts provable in bankruptcy.

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66

Distribution of a bankrupt's property...contd.

- All such debts are required to be paid in *pari passu*.
- If there is any surplus after payment of those debts, it is applied to pay any interest from the date of the RO.
- The bankrupt is entitled to receive any surplus which remains after payment in full of his creditors.

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67

DISABILITIES

On becoming bankrupt a debtor is subject to certain disabilities, including the following:

- a) All his property, including those acquired before his discharge, are vested in his TIB for distribution to his creditors: ss. 20(1), B.A.;
- b) He must not, either alone or jointly with any other person, obtain credit of or above Kshs. 100/= without disclosing that he is an undischarged bankrupt.
- c) He cannot take part in the management of any company without leave of the court that declared him bankrupt.

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68

Disabilities...contd.

- d) He cannot act as a receiver or manager of the property of a company on behalf of debenture holders: s.346, Companies Act.
- e) He cannot be appointed a justice of the peace: s. 101(1), B.A.
- f) He cannot be elected mayor (*ibid.*).
- g) He cannot hold office of a local authority council, (*ibid.*).
- h) He cannot hold office in a school committee, (*ibid.*).

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69

Disabilities...contd.

- i) He cannot hold office in a road board (*ibid.*).
- j) He is disqualified for election as an MP: Article 99 of Constitution.

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70

DISCHARGE

- By s. 29, B.A., the bankrupt must apply for his discharge at the expiration of the period specified by the court.
- The bankrupt may apply for his discharge any time after adjudication.
- However, application cannot be heard before public examination.
- Discharge may be:
 - Unconditional, i.e. frees bankrupt from all further liability on provable debts; or

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71

Discharge...contd.

- Conditional, i.e. subject to condition that after-acquired shall be disposed in a certain manner; or
- Suspensive, i.e. not becoming unconditional until after a certain period of time, or until the payment of certain debts; or
- Conditional and suspensive.

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72

Discharge...contd.

- At hearing, the court may:
 - a) Grant absolute and immediate discharge; or
 - b) Refuse the discharge; or
 - c) Grant an order of discharge, but suspend its operation for a specified time; or
 - d) Grant an order of discharge subject to conditions as to earnings or income which accrue to the bankrupt afterwards or after-acquired property:
- See s. 29(2), BA.

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73

Discharge...contd.

- The powers to discharge and attach conditions may be exercised concurrently: s. 29(8), BA.
- No unconditional discharge will normally be granted except where the bankrupt is entitled to a certificate of misfortune: s. 29(4), BA.
- Such certificate may be issued by the court where the bankruptcy was brought about by causes beyond debtor's control and without misconduct on his part.
- It releases him from all statutory disqualifications.
- Bankruptcy due to speculation with money is not a misfortune: see *Re a Debtor (No.612 of 1960)* [1964] 2 All E.R. 165.

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74

Discharge...contd.

Effect of an order of discharge

- A discharge order frees the bankrupt from all debts except:
 - i. Government debts, unless the PS, Treasury consents to the discharge;
 - ii. Debts incurred by means of fraud or fraudulent breach of trust
 - iii. Any liability under a judgment against him in an action for seduction or as co-respondent in a matrimonial cause: see s. 32, B.A.

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75

Discharge...contd.

- Non-provable debts will not be affected by the discharge and can be sued upon in the normal way.
- The order may be annulled by the court, where, in its opinion, the debtor ought not to have been adjudged bankrupt.

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76

THIS IS A GOOD POINT TO SAY:

THANK YOU.

Rautta-Athiambo
Nairobi.
October, 2012

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77