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KIRIRI WOMENS' UNIVERSITY OF SCIENCE AND TECHNOLOGY
UNIVERSITY EXAMINATION, 2023/2024 ACADEMIC YEAR
THIRD YEAR, SECOND SEMESTER EXAMINATION
FOR THE DEGREE OF BACHELOR OF SCIENCE
(BUSINESS ADMINISTRATION)

Date: 8th December, 2023
Time: 11.30am –1.30pm

KAC 305 - BANKRUPTCY AND RE-ORGANIZATION

INSTRUCTIONS TO CANDIDATES

ANSWER QUESTION ONE (COMPULSORY) AND ANY OTHER TWO QUESTIONS

QUESTION ONE (30 MARKS)

CASE STUDY

JITESH DHIRAJAL MALDE (A DEBTOR)

JUDGMENT

Introduction and Background

1. The Petition dated 27th August 2019 was lodged by **JITESH DHIRAJILAL MALDE SHAH** seeking a bankruptcy order against himself and his estate. It is supported by his affidavit sworn on 27th August 2019. The petition is accompanied by the Official Receiver's Certificate of Compliance dated 30th August 2019.
2. The Petition is also supported by Peterson Karimi Gakuru, the 5th Creditor, through his affidavit sworn on 24th November 2020. It is opposed by the 4th Creditor, Kamau Wanganga, through the Grounds of Opposition dated 27th February 2020 and by Tabitha Tatua and Erastus Tatua Gicheha, the 17th and 37th Creditors respectively through the Grounds of Opposition dated 12th November 2019
3. The Petitioner depones that he is the proprietor of *Vikat* Millers, a business involved in the milling of dry maize for *unga* or maize meal. He explains that the business has been experiencing difficulties and exponential loss of income leading to substantial debts owed to creditors who have taken him to court. He states that at the time of filing the petition his business was operating at a loss position and was on the verge of shutting down. The Petitioner urges the court to appoint a Trustee to manage his affairs and carry on his business including bringing or defending any legal proceedings by or against him and to apply to court to sell or otherwise deal with his property and business or assets.

The 5th Creditor's Reply

4. The 5th Creditor supported the petitioner. He deponed that the petitioner with his partner Bhavisha Murji Arjan Halai contracted him to supply dry maize. Under the agreement, he supplied 564 bags of dry maize in February 2018 and raised an invoice for payment dated 23rd February 2018 for Kshs. 1,629, 773.60 inclusive of transport costs.

5. The 5th Creditor states that the petitioner and his partner issued him with two cheques; No. 000410 dated 27th March 2018 for Kshs. 765,700.00 and No. 000411 dated 29th March 2018 for Kshs. 813,000.00 which were dishonoured and he was surcharged Kshs. 4,400.00 on the unpaid cheques. Thereafter, the Petitioner and his partner paid Kshs. 650,930.00 leaving a balance of Kshs. 978,843.00 together with Kshs. 4,400.00.
- In reference to the above case discuss three cases where Jitesh could be seen to have committed an act of bankruptcy. (6 Marks)
 - Discuss ways in which Jitesh would use to rescue his bankrupt estate (6 Marks)
 - Outline the procedures the creditors in the above case will be required to follow to present their petition in bankruptcy proceedings (8 Marks)
 - Explain the official duties of the receiver in regards to Jitesh Estate. (6 Marks)
 - Explain two ways in which a Jitesh (debtor) can enter into bankruptcy (4 Marks)

QUESTION TWO (20 MARKS)

- Outline six main obligations of a bankrupt persons. (6 Marks)
- A trustee is a person or body who manages your bankruptcy. Identify and Discuss any six other primary duties of the trustees. (6 Marks)
- Outline four circumstances where a debtor can be arrested. (8 Marks)

QUESTION THREE (20 MARKS)

- A court may refuse to discharge a bankrupt person from his duties. Identify such cases where a court may refuse to give the debtor an absolute discharge (7 Marks)
- Discuss five rights of a receiver in bankruptcy proceedings (5 Marks)
- A company may decide to do share capital reduction. Explain the main reason that may lead to share capital reduction. (5 Marks)
- Discuss three reason that have lead to rapid growth of bankruptcy laws. (3 Marks)

QUESTION FOUR (20 MARKS)

- Outline four the condition on which a creditor may have to fulfill before making a petition. (8 Marks)
- Identify and explain two types of reorganization that can take place in a company. (4 Marks)
- Identify three circumstances where a trustee is released from his duties. (3 Marks)
- There are some debts that the that the bankrupt will still have to pay after the bankruptcy has ended. Identify four such debts. Identify five main debts that are not extinguished after bankruptcy (5 Marks)

QUESTION FIVE(20 MARKS)

- Identify and explain six differences between balance sheet and statement of affairs (6 Marks)
- Outline three items paid out under bankruptcy laws as first priority claims. (6 Marks)
- Discuss Four cases where a court may adjourn public examination of debtor. (8 Marks)