



REPUBLIC OF KENYA



KENYA LAW
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**Mohamed & another v Mohamed (Commercial Case E010 of 2018)
[2024] KEHC 10235 (KLR) (Commercial and Tax) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E010 OF 2018
PM MULWA, J
AUGUST 15, 2024**

BETWEEN

KASSIM MOHAMUD MOHAMED 1ST PLAINTIFF

HASSAN MOHAMUD MOHAMED 2ND PLAINTIFF

AND

MOHAMED KORIYOW MOHAMED DEFENDANT

RULING

1. This is a matter where an arbitral award was recognized and adopted as a judgment of this court. On 19th June 2023 the Hon. Mary Osoro, Deputy Registrar issued a ruling directing the defendant, who is the judgment debtor herein, to pay to the plaintiffs a sum of Kshs. 5 million within 90 days failing which a warrant of arrest would issue.
2. Dissatisfied, the defendant/applicant filed the instant application dated 4th August 2023 under sections 1A, 1B, 3A, 63(e) and 80 of the [Civil Procedure Act](#), Order 45 rule 1 of the [Civil Procedure Rules 2010](#) and all other enabling provisions of the law. The applicant seeks;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That the plaintiff (sic) herein be allowed to liquidate the decretal amount in monthly instalments of Kshs. 200,000/- until payment in full.
 - e. That the court grants any other order that it deems fit in the circumstance and in the interest of justice.



- f. That the costs of this application be provided for.
3. The Deputy Registrar seems to have allowed the first three prayers which sought the stay and setting aside of her orders at the ex-parte stage. I will not therefore dwell on the issue.
4. The grounds on the face of the application and which were reiterated in the supporting affidavit were that the applicant had made effort and paid the plaintiffs Kshs. 1 million and prayed he be allowed to liquidate the balance in monthly instalments of Kshs. 200,000/-. The applicant deposes that he was open to a joint valuation of his land parcel IR No. 211674 at Syokimau valued at Kshs. 30 million with a view to settling the entire decretal sum.
5. The application is opposed through the 1st plaintiff's replying affidavit and further affidavit on the grounds that it is an afterthought and an abuse of the court process by a party hellbent to circumvent and disobey court orders by filing meaningless applications. And that the applicant is a person of means and able to settle the entire decretal sum.

Analysis and Determination

6. The parties agreed to canvass the application by way of written submissions, wherein they cited respective authorities which the court has considered alongside the rival affidavits. The issue for determination is whether the applicant's prayer to liquidate the decretal amount in monthly instalments is tenable.
7. On his proposal, the applicant is required to show sufficient cause to draw the discretion of this court in his favour.
8. The applicable principles were clearly set out in the case of *Rajabali Alidina v Remtulla Alidina & Another* (1961) EA 565 thus;
 - a. The circumstances under which the debt was contracted
 - b. The conduct of the debtor
 - c. His financial position, and
 - d. His bona fides in offering to pay a fair proportion of the debt at once.
9. These principles were reiterated in the case of *Freight Forwarders Ltd v Elsek & Elsek (K) Ltd* (2012) eKLR, where the court narrowed down to what amounted to be 'sufficient cause' to include the following;
 - a) The debtor is unable to pay in lump sum
 - b) The debtor can pay by reasonable monthly instalments, and
 - c) The application is made in utmost good faith
10. It is upon the applicant to demonstrate how his case falls into the applicable principles. It is clear that each case must be considered on its own merit and the mere fact of inability to pay the full sum at once is not sufficient reason. Any indulgence given to the judgment debtor must not prejudice the decree holder.
11. The applicant in the instant case has not made any attempt to demonstrate his inability to settle the decretal sum. He merely contends that he had paid Kshs. 1 million to the plaintiffs and needed to be allowed to liquidate that balance by payment of Kshs. 200,000/- in monthly instalments. I am



persuaded by the plaintiffs' contention that the applicant has the capacity, but is only unwilling to pay the decretal sum.

12. It is unfortunate that this is a matter commenced in 2018 and is still being unnecessarily litigated in court. The defendant's application must fail.

13. The upshot is that;

- i. The application dated 4th August 2023 is dismissed with costs to the plaintiffs.
- ii. The applicant to pay the outstanding decretal sum as at the date hereof to the plaintiffs within 30 days from the date herein, in default execution to issue.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF AUGUST 2024.

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P. MULWA

JUDGE

In the presence of:

Mr. Musundi for plaintiffs/respondents

Mr. Webale for defendant/applicant

Court Assistant: Lilian

