



Cubic Business Solution Limited v Egerton University (Miscellaneous Case E380 of 2022) [2023] KEHC 21896 (KLR) (Civ) (9 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21896 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

MISCELLANEOUS CASE E380 OF 2022

A MABEYA, J

AUGUST 9, 2023

**IN THE MATTER OF THE APPLICATION BY CUBIC BUSINESS SOLUTION LIMITED
FOR THE RECOGNITION AND ENFORCEMENT OF AN ARBITRATION AWARD**

-AND-

IN THE MATTER OF THE ARBITRATION ACT

BETWEEN

CUBIC BUSINESS SOLUTION LIMITED APPLICANT

AND

EGERTON UNIVERSITY RESPONDENT

RULING

1. This is a ruling on the Respondent/applicants (“the applicants”) Motion dated 27th June, 2023. It sought that the applicant be allowed to settle the decretal sum by instalments. That it be permitted to pay Kshs. 2M and thereafter Kshs. 699,038/56 in 12 months.
2. The grounds were that the applicant is a public institution. It has no funds. That due to historical mismanagement as disclosed in the Report of State Corporations, the applicant cannot pay the decretal sum in lump sum. That making such payment will subject it to a collapse. That it expects to get funds from the return of students in the month of August, 2023. Finally, that no prejudice will be suffered by the Claimant/respondent (“respondent”) if the Orders sought were granted.
3. The respondent opposed the application vide the replying affidavit of William Omondi sworn on 12th July, 2023. It was contended that the respondent had offered the applicant to settle the decretal sum way back in 2021 in the monthly sum of Kshs. 500,000 but the applicant failed. The decretal sum now



stood at Kshs. 8,388,462/=. That the Court cannot aid a party to benefit from his/her own wrong. That the applicant was seeking to benefit from the consequences of its own default.

4. The respondent contended that if the court was inclined to granting the payment by instalment the same should be as follows: -
 - a. 10/8/2023 – Kshs. 6M
 - b. 10/9/2023 – Kshs. 1.146M
 - c. 10/10/2023 – Kshs. 1.052M

That if the decretal sum is settled in 3 months as proposed, it would be fair to the respondent.

5. I have considered the respective parties' affidavits and the Counsels' submissions. This is an application for leave to settle the decretal sum by instalments. Such an application is in the dissention of the court. Like all other discretions the same is not to be exercised capriciously but judiciously.
6. In an application such as this one, the court considers the financial position of an applicant. It has also to consider the delay that will be caused to the victorious party who will be made to wait for a longer time to enjoy the fruits of its judgment. The Court has to strike a balance between the frustration the victorious party has to suffer with the hardship, if any, that the judgment debtor may be subjected to if it is made to settle the decretal sum at once.
7. In the present case, the decretal sum is in the region of Kshs. 8,388,462/=. The Arbitral Award herein was published on 5/12/2021. It was for a mere sum of Kshs. 6,189,472/=. The applicant offered to settle the said sum at Kshs. 500,000/= per month which the respondent was agreeable to such an arrangement. Because of its folly in attempting to challenge the same, the amount has skyrocketed to Kshs. 8.3M.
8. I have considered that the applicant is a public institution. It has been sworn that there has been historical mismanagement which has made the hitherto shining public University to nearly a white elephant. It can no longer meet its obligations. That if the entire sum is ordered to be settled, the institution would run into financial headwinds.
9. I think it is high time the Constitution of Kenya 2010 was fully enforced. Chapter 10 thereof should be vigorously enforced against irresponsible persons who hold public office and run such institutions into monumental mess. It is only then that discipline may be instilled in public administration. When one knows the likelihood of suffering personal loss for mismanagement, he will be cautious. Until such a time, our public institutions will continue to suffer financial bleeding unabated.
10. That said, I have a public institution before me which cries for positive consideration. At the same time, there is a claimant/respondent who has been away from its monies since 2017. Doing the best I can, I note that the initial payment proposed by the applicant is Kshs. 2M and the balance in 12 months' time. On the part of the claimant/respondent, it is Kshs. 6 million and 3 other instalments.
11. Justice demands that the positions of the competing interests of the parties be weighed against each other. I allow the application. The decretal sum be paid as follows: -
 - a. Kshs. 4M on or before 23/8/2023.
 - b. The balance in 6 equal monthly instalments of Kshs. 731,410/40 and on each 23rd day of the subsequent months from 23/9/2023 until payment in full.



- c. In default of any one instalment on the appointed date, the entire sum to become due and owing and execution to issue.
- d. Costs of the application to the respondent in any event.

It is so ordered.

DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF AUGUST, 2023.

A. MABEYA, FCIArb

JUDGE

