



**Step Up Holdings (K) Ltd t/a Stepup Training Institute v Great Lakes University of Kisumu (Miscellaneous Civil Application 440 of 2019) [2022] KEHC 10208 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10208 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CIVIL APPLICATION 440 OF 2019**

**JM NGUGI, J**

**JUNE 30, 2022**

**BETWEEN**

**STEP UP HOLDINGS (K) LTD T/A STEPUP TRAINING INSTITUTE ..... APPLICANT**

**AND**

**GREAT LAKES UNIVERSITY OF KISUMU ..... RESPONDENT**

**RULING**

1. The Respondent herein (Step Up Holdings (K) Ltd)(hereinafter, “Step Up Holdings”) entered into a Memorandum of Understanding (MOU) with the Applicant (hereinafter, “Great Lakes University”) sometime in 2012. The MoU’s effect was to establish a joint venture of sorts whereby the two entities would collaborate in offering courses in Nakuru town. Step Up Holdings would offer Great Lakes University’s courses in Nakuru.
2. Pursuant to the MoU, Step Up Holdings set up a teaching centre in Nakuru and recruited students to study courses offered by the Great Lakes University.
3. The relationship between the parties sullied. Step Up Holdings claims that in January, 2015, the Great Lakes University took over all the students at its teaching centre in Nakuru and relocated them to Hyrax Institute in total breach of the MoU.
4. Step Up Holdings filed arbitration proceedings as per the dispute resolution terms of the MoU. On 19/04/2019, after a full hearing, the Arbitral Tribunal published an award for Kshs. 12,823,950 plus interests and costs in favour of Step Up Holdings. Thereafter, the Arbitrator assessed costs at Kshs. 2,317,731.
5. At the time Great Lakes University was filing the present Application, the amount it owes to Step Up Holdings is, by its own admission, Kshs. 23,185,108.



6. The arbitral award has been adopted as an order of the Court and Step Up Holdings seeks to enforce it through execution. To forestall that possibility, Great Lakes University has filed the present Application. It is dated 12/03/2022. It seeks the following prayers:
  - 1) – Spent-
  - 2) That this Honourable Court be pleased to order stay of execution of the Judgment of the Court issued on 8<sup>th</sup> July, 2021, pending the hearing and the determination of this Application.
  - 3) That this Honourable Court be pleased to grant leave to the Applicant to liquidate the Judgment sum awarded to the Respondent herein being Ksh 23,185,108/- plus costs and interests thereof, in monthly instalments of Ksh 500,000.00 to be paid from the date of the order until final settlement.
  - 4) That cost of this Application be provided for.
7. The gist and grounds of Application are stated on the face of the Application and are repeated in the Supporting Affidavit and Submissions filed on behalf of Great Lakes University. They can be summarized as follows:
  - a. The Applicant is willing to pay the decretal sum and costs as awarded by the Court.
  - b. The Applicant is facing massive financial difficulties and is unable to pay the decretal sum which is enormous till payment in full.
  - c. The Judgment debtor seeks to pay the decretal sum and costs instalments of Ksh 500,000/= per month till payment in full.
  - d. The Applicant is a registered institution and thus poses no threat whatsoever of absconding its obligation to pay the decretal sum
  - e. The Applicant being a learning institution will be highly prejudiced and its operations crippled should the Respondent proceed and execute the decretal sum.
  - f. It is fair and just that this Application is allowed.
8. The bottom line is that Great Lakes University seeks to settle the decretal amount in instalments of Kshs. 500,000/-. It says that it requests for this accommodation in good faith so that it can remain in business and repay the full amount.
9. Step Up Holdings believes that the request is in bad faith. It expresses dismay that given the amounts owed, it would take upwards of 5 years to finish paying the full amount owed. It believes that the proposal is unreasonable. It also believes that the conditions for the grant of the discretionary order are not met in this case.
10. The parties have engaged in some low-level technical tussle on the propriety of the Great Lakes University's current advocates, Owiti, Otieno & Ragot Advocates to be on record in place of Anthony, Kago & Co. Advocates. Ultimately, I do not believe that the tussle amounts to much: the current advocates have exhibited a consent signed by both the former and current lawyers. I do not think the technical argument amount to much. The controversy deserves a substantive determination.
11. The substantive issue is whether the Court should exercise its discretion to allow Great Lakes University to pay the decretal amounts in instalments of Kshs. 500,000/- per month.



12. The legal rule on payment of a decretal sum in instalments is found under Order 21 Rule 12 of the [Civil Procedure Rules](#), 2010 which provides that:

12.

- (1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.
- (2) After passing of any such decree, the court may on the application of the judgment debtor and with the consent of the decree-holder or without the consent of the decree-holder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit.

13. The Rule in Order 21 Rule 12 (2) of the Civil Procedure Rule, 2010 gives the trial Court a wide discretion as to whether payment of the amount decreed be postponed or settled by way of instalments. A celebrated decision of vintage pedigree, *A. Rajabali Alidina v Remtulla Alidina & Another*. (1961) EA 565, Law JA stated that all commentators on the Civil Procedure Code agree that the Court's discretion to order payment of the decretal amount in instalments is one which must be exercised in a judicial and not an arbitrary manner. Further, the onus is on the Judgment-Debtor to show that it is entitled to indulgence under this rule.

14. In the Rajabali Alidina Case, the Court stated that Courts should only allow payment in instalments for sufficient reason. The Court described sufficient reason to include: the circumstances, under which the debt was contracted, the conduct of the debtor, his financial position, and his bona fides in offering to pay a fair proportion of the debt at once.

The High Court also quoted the case of Hildegard Ndalut versus Lelkina Dairies Ltd & Anor. (2005) eKLR, where Dulu Ag. J (as he was then) noted that the disputants referred to the case of *Keshavji Jethabhai & Bothers Limited versus Saleh Abdulla* [1959] EA 260, a case from the High Court of Tanganyika. Dulu Ag. J noted that the case followed the principles laid down in the Indian case (*Sawatram Ramprasad versus Imperial Bank of India* (1933) AIR Nag. 33) which underscored that a defendant should be required to show his bona fides by arranging fair payment of the proportion of the debt – in persuading the Court to allow payment by way of instalments. He noted that that was the proper test to apply in granting orders for payment of a decretal amount by way of instalments. He noted that the judgment creditor is entitled to payment of the decretal amount, which he should receive promptly to reap the fruits of the judgment. Further, the judgment debtor might genuinely be in a difficult position in paying the decretal amount at once. He noted that if that was the case, he has to show seriousness in paying the amount. He should show his bona fides by arranging fair payment proposals to liquidate the amount. This was properly illustrated in the case of [Medol Group Ltd versus Adrian Company Ltd & Another](#) (2012) eKLR, where the applicant in the case had shown bona fides by paying 1 Million Kenya Shillings in the course of its application. The court was persuaded there existed sufficient cause to order payment by instalment of the decretal amount.



15. I will now apply these factors to the case at hand:
- a. Circumstances under which the debt was contracted: In my view the circumstances under which the debt was contracted neither assists nor harms the Applicant's Application to be permitted to pay the decretal sum in instalments. This is a typical business debt. It is not possible to say that Great Lakes University acted in a particularly depraved, unconscionable or in particularly unethical manner in the actions that gave rise to the debt. This factor does not disentitle the Great Lakes University from the exercise of Court's discretion.
  - b. The conduct of the Judgment-Debtor: I have rehashed, above, the history of this debt. The dispute arose in 2015. The arbitral award was published in 2019. Since then, the Great Lakes University has not paid a single cent towards settlement of the decretal amount. There is simply no rose-tinted way to see this: the conduct of Great Lakes reeks of bad faith and unwillingness to pay its just debts.
  - c. The willingness and bona fides to pay a fair proportion: Great Lakes University has not made any offer or overture to pay any fair proportion of the debt. For a debt that crystallized in 2015 and was officially adjudged in a formal arbitral award in 2019, Great Lakes University should have been ready to make a substantial lump sum payment as part of its request to pay the rest of the amount in instalments. No such offer has been made.
  - d. The reasonableness of the offered instalments: Great Lakes University offers to pay the decretal amount in instalments of Kshs. 500,000/-. This is patently unreasonable. As Step Up Holdings demonstrates, it will take more than five years to liquidate the amount.
  - e. The financial position of the Applicant: The Great Lakes University has, in my view, clearly demonstrated that it is in financial distress. The University has demonstrated that its current liabilities amount to Kshs. 796,320,920. It has also demonstrated that that its income is in the range of Kshs. 3 Million per month. In the circumstances, the University does not explain how it will be able to settle these liabilities. Indeed, it is unclear how it hopes to pay Kshs. 500,000 per month to this one creditor in the face of the other liabilities.
16. The bottom line is that there is simply no good reason to exercise the Court's discretion in favour of the Great Lakes University. Either we believe the University's position in which case the Court's discretion would have been exercised in vain or we chase logic down its own dark alley and conclude that it is acting in bad faith. If the University has been unable to pay a single cent in the past 3 years since the arbitral award was published, it was either unable to so pay because it was financially constrained to do so or because it was acting in bad faith. If it is the latter, nothing has been put before the Court to persuade the Court that things have suddenly shifted to enable it to start paying now. If the former, it automatically disentitles the University from the discretionary relief it seeks.
17. Differently put, the University is either sikio la kufa which, in, the Swahili methali, halisikii dawa or, as Wahenga said, it is a mchimba kaburi ambaye ameingia mwenyewe. In either scenarios, the Court cannot exercise its discretionary powers to benefit it. Unfortunately, to add to the cacophony of metaphors, the Great Lakes University must lie on the bed it has made.
18. The upshot is that the Application dated 12/03/2022 is without merit and is dismissed with costs.
19. Orders accordingly.

**DATED AND DELIVERED AT NAKURU THIS 30TH DAY OF JUNE, 2022**

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**JOEL NGUGI**  
**JUDGE**

