



Synergy Industrial Credit Ltd v Oxyplus International Ltd & 2 others (Civil Suit E077 of 2021) [2022] KEHC 12940 (KLR) (Commercial and Tax) (26 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12940 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E077 OF 2021
A MABEYA, J
AUGUST 26, 2022**

BETWEEN

SYNERGY INDUSTRIAL CREDIT LTD PLAINTIFF

AND

OXYPLUS INTERNATIONAL LTD 1ST DEFENDANT

AMIT KUMAR AGGARWAL 2ND DEFENDANT

PANNA DILIP CHAUHAN 3RD DEFENDANT

RULING

1. On August 30, 2021, judgment was entered against the defendants for Kshs 8,384,265/- together with interest and costs of the suit.
2. Vide an application dated September 24, 2021, the defendants applied that they be allowed to liquidate the decretal amount of Kshs 8,384,265/- in instalments of Kshs 232,896.25 from the date of the ruling until payment in full. They also sought for the costs of the application.
3. The application was expressed to be brought under articles 47, 48, 50 and 159 of the *Constitution of Kenya*, sections 1A, 1B, 3, 3A and 63(e) of the *Civil Procedure Act* and order 51 rule 1 of the *Civil Procedure Rules*.
4. The application was based on the grounds that there is a judgment against them for Kshs 8,384,265/=. That they are facing financial difficulties and are therefore seeking to liquidate the said decretal amount in instalments of Kshs 232,896.25 within 36 months from the date of the ruling of this application.



5. The defendants pleaded that they are unable to raise the whole decretal amount at once as it is an extremely large amount and that unless the orders sought are granted the plaintiff is likely to proceed with execution to the detriment of the defendants.
6. The plaintiff opposed the application vide a replying affidavit of Jacob Mbae Meeme sworn on November 18, 2021. He averred that the court has the discretion to allow the settlement of the decretal amount in instalments. That the discretion must however, be exercised judiciously.
7. That the defendants have consistently made claims that they have no outstanding amounts payable to the plaintiff and have made no effort to settle the debt. That the decretal sum of Kshs 8,384,265/= is only the judgment on admission. A further sum of Kshs 54,312,790/- remains for determination in the main suit.
8. The plaintiff contends that the proposed amount for payment in instalments is far too low and will take a long time to settle hence unfair to the plaintiff.
9. Order 21 rule 12(2) of the Civil Procedure Rules provides: -

“After passing of any such judgement or decree, the court may on the application of the judgement-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 judgement-debtor or the taking of security from him, or otherwise, as it thinks fit.”
10. The above provision clothes this court with the discretion to order the payment of the decretal sum in instalments for a sufficient cause. The court may also impose terms if it allows payment in instalments.
11. In Freight Forwarders Ltd v Elsek & Elsek (K) Ltd [2012] eKLR, the court quoted the case of Keshavji Jethabhai & Bros Ltd v Saleh Abdulla [1959] EA (J) wherein it was held: -

“Whilst creditors rights must be considered, each case must be considered on its own merits and discretion exercised accordingly. ... the mere inability of a debtor to pay in full at once is not a sufficient reason for exercise of the discretion. ... the debtor should be required to show his bona fides by arranging prompt payment of a fair proportion. ... Hardship of the debtor might be a factor, but it is a question in each case whether some indulgence can fairly be given to the debtor without prejudicing the creditor.”
12. In A Rajabali Alidina v Rehmatalula Alidina & anor [1961] EA 565, it was held: -

“The court can consider the circumstances in which the debt was incurred; the conduct of the debtor; his financial position; and his bona fides.”
13. The foregoing are then the parameters within which this court is to consider the defendants’ application. The defendants’ main contention is that they are undergoing financial hardship hence the need to liquidate the said sum in instalments. To prove this they attached copies of the 1st defendant’s bank statements from January 2021 to August 2021; a document indicating the net profit for the year 2020 and 2021 and a projection plan showing that the 1st defendant would make profits from the period of September 2021 to August 2022 among other documents.
14. It may be true that the 1st defendant is indeed facing financial difficulties. However, that is not a sufficient factor to stop the plaintiff’s right to execute the judgment which is in his favour.



15. Of importance is a show of good will on the part of the defendants even as they seek to pay the debt via instalments. A sign of good will and dedication to pay the outstanding decree would be if the defendants would have deposited or proposed to deposit a reasonable amount of the decretal sum to the plaintiffs even and then seek to pay the balance via instalments. This they did not do.
16. Further, the defendants have not paid any amount towards the paying off of the decretal amount. They proposed that the instalments commence after the ruling., The question that begs an answer is, if they were acting in good faith, why did they not start to pay immediately on filing the application as a sign of good faith.
17. In any event, the proposed instalments are too minimal as would amount to an injustice to the plaintiff who should be allowed to enjoy the fruits of its judgment.
18. Accordingly, I find the application to be without merit and dismiss the same with costs to the plaintiff.
It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF AUGUST, 2022.

A MABEYA, FCI Arb

JUDGE

