



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 230 OF 2015

HUSSEIN AHMED ABDULLAHI.....PLAINTIFF/RESPONDENT

VERSUS

SAMIRA MOHAMED ABDI.....DEFENDANT/APPLICANT

RULING

1) Samira Mohamed Abdi, the defendant/applicant took out the motion dated 3rd March 2021 whereof she sought for the following orders:

a) THAT this application be certified as urgent and be heard exparte in the first instance.

b) THAT this honourable court be pleased to grant a stay of execution from the judgment delivered herein and all other consequential orders pending the hearing and determination of this application;

c) THAT this honourable court be pleased to lift the warrants of committal of judgment-debtor dated 23rd February 2021 and order that the defendant be released forthwith from Industrial Area Remand Prison pending the hearing and determination of the application herein.

d) THAT costs of this application be provided for.

2) The applicant filed an affidavit she swore in support of the motion. Hussein Ahmed Abdullahi, the plaintiff/respondent filed grounds of opposition to resist the defendant's motion.

3) When the application came up for interpartes hearing, learned counsels appearing in this matter recorded a consent order to have the application disposed of by written submission.

4) I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit plus the grounds of opposition. I have further considered the rival written submissions.

5) The plaintiff/respondent has raised a preliminary issue which needs to be considered and determined first before determining the merits of the motion. It is the submission of the plaintiff/ respondent that the defendant/applicant has not made any prayer seeking to pay the decretal sum by monthly instalments. The defendant/applicant did not respond to the issue raised by the plaintiff/respondent.

6) I have perused at the motion and it is apparent that the applicant did not include as one of prayers an order for payment by instalments. However, what is clear is that in the body of the application specifically in paragraph 6, the applicant stated that she and her insurer are proposing to settle the balance of the decretal sum by monthly instalments. In paragraph 10 of her supporting affidavit, the defendant avers that her insurer proposes to settle the balance of the decretal amount by monthly instalments of ksh.200,000/=.

7) Mr. Bench, learned advocate for the Defendant/Applicant deponed in the affidavit he swore in support of the further certificate of urgency dated 8th March 2021 that the defendant's insurance topped up the amount with a further kshs.100,000/= with a proposal to settle the remainder by monthly installments of ksh.200,000/-.

8) It is clear in my mind that the defendant/applicant intended to seek for leave to settle the decretal amount by instalments but due to inadvertence she failed to specifically put the order amongst the prayers set out in the motion. In broad interest of justice, I find that the prayer is one of the issues left for the determination of this court in the instant application.

9) The defendant/applicant has urged this court to permit her to liquidate the balance of the decretal sum by monthly instalments of ksh.200,000/=. It is argued that the outbreak of covid 19 pandemic has stagnated the defendant's insurer's business making it unable to raise

the decretal sum at once. It is argued that the insurers clientele having not been taking out insurance covers due to the lockdown imposed by the government of Kenya to contain the spread of covid 19 virus thus dipping the revenue flows.

10) The plaintiff/respondent did not controvert the applicant's factual arguments. It is not in dispute that judgment in the sum of ksh.3,663,740 plus interest and costs was made in favour of the plaintiff and as against the defendant. It is also apparent that the defendant has made partial payments with the intention of settling the decretal amount.

11) However, a substantial sum still remains unpaid. The defendant in her written submissions has proposed to liquidate the outstanding amount by monthly instalments of ksh.250,000.

12) Under the provisions of Order 21 rule 12(2) of the Civil Procedure Rules, the court is given the discretion to order that payment of decretal amount to be postponed or to be made by installments so long as the applicant shows sufficient cause. In this instant application the defendant has stated that her insurer is unable to pay the decretal sum at once because the insurance business went down due to the effects of the outbreak of Covid 19 pandemic.

13) The plaintiff/respondent did not rebut the defendant's averments. I am satisfied that the defendant has given plausible and sufficient grounds to justify why she should be allowed to liquidate the balance of the decretal sum by monthly instalments.

14) In the end, the motion dated 3rd April is allowed thus giving rise to issuance of the following orders:

i. There be an order for stay of further execution of the decree in this matter.

ii. The defendant/applicant is given leave to liquidate the balance of the decretal amount by monthly instalments of kshs.250,000/= with effect from 7th September 2021 and thereafter on or before the 7th day of each succeeding month until full payment.

iii. In default of any one installment, the order for stay shall automatically lapse and the plaintiff/applicant shall be at liberty to execute the decree.

iv. Each party to bear their own costs of the motion.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26TH DAY OF AUGUST, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Respondent

..... for the defendant/applicant