



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 192 OF 2006

ISMAIL HASSANPLAINTIFF/RESPONDENT

-VERSUS-

DICKSON WAMIYA

NOSKCID (AFRICA ASSET MANAGEMENT LTD).....DEFENDANTS/APPLICANTS

RULING

1. Judgment was entered herein, in favour of the plaintiff against the defendants, for Ksh 1,354,000 with interest, on 6th November 2012. The defendants have not to date paid that judgment amount. On 14th November, after the 1st defendant failed to show cause why he should not be arrested for failing to pay the decretal sum a warrant of arrest was issued. The 1st defendant as consequence of the issuance of the warrant of arrest was provoked to file the Notice of Motion dated 13th November 2019.

2. He seeks an order, by that application, to settle the decretal sum by instalments. He seeks to pay Ksh 20,000 per month. The decretal sum as at 14th November 2019 is now at Ksh 4,058,225.68.

3. The 1st defendant stated that because of other family responsibilities and other debts he is presently servicing, Ksh 20,000 is all he can afford to pay.

4. The plaintiff's view of that offer is that the amount is unreasonable because it will take 17 years to pay the entire decretal sum. In the plaintiff's view the application is a delay tactic.

5. Justice G. L. Nzioka considered an application such as the one before me in the case **Diamon Star General Trading LLC v Ambrose D.O. Rachier carrying on business as Rachier & Amollo Advocates (2018) eKLR** and this is what the learned judge stated:

“47. However, the Applicant other than alleging inability to pay, has not demonstrated his financial position to enable the Court ascertain the reasonable amount that he can pay. It is trite law that unless there are good, sufficient and adequate reasons, a judgment debtor should be allowed to enjoy the fruits of the judgment. Therefore as much as the Court will consider circumstances under which this debt was incurred, the Court will also have to consider the right of the judgment creditor to prompt payment.”

6. Indeed even in this case the 1st defendant has not demonstrated his financial position. With that in mind I order as follows:

a. The defendants shall make a lump sum payment to the decree holder of Ksh 200,000 on 30th April 2020.

b. Thereafter the defendants shall pay to the decree holder Ksh 20,000 per month with effect from 29th May 2020 for 24 months. Thereafter the defendant shall pay to the decree holder the entire amount outstanding thereon.

c. In default of any one payment as ordered herein execution shall issue.

d. The 1st defendant shall pay the costs of the Notice of Motion dated 13th November 2019.

DATED, SIGNED and DELIVERED at NAIROBI this 27th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17th April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **27th** day of **April, 2020**.

MARY KASANGO

JUDGE