



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ENVIRONMENT AND LAND CASE NO. 107 OF 2016

LABAN KIRONGO.....PLAINTIFF/APPLICANT

VERSUS

MWONGERA M'ARITHO....DEFENDANT/RESPONDENT

RULING

1. The notice of motion dated 25th September 2018 seeks orders that the court allows the applicant to pay the assessed costs in installments of Ksh. 5,000 per month till payment in full, that JO CET AUCTIONEERS be directed to file their bill in court for taxation, that costs of the application be provided for and that meanwhile, there be a stay of execution

2. The grounds in support of the application are that Plaintiff/applicant has no means of settling the decretal amount at once and that defendant has levied attachment through JO CET AUCTIONEERS.

3. The applicant/plaintiff has sworn an affidavit stating that he is unable to pay Ksh. 100,485 as he has no means of income at all. He avers that JO CET AUCTIONEERS proclaimed his livestock and all his household goods which were his source of livelihood. He also stated that he has no land of his own hence he has no income that sustains him.

4. The respondent/defendant through a replying affidavit dated 4th October 2018 averred that the applicant has always been aware of the costs payable and he made no attempt to pay. Further, the respondent contends that the applicant has property which can be sold to offset the costs, hence applicant should not be allowed to pay the costs on installments. The respondent urges the court to dismiss the application as it is not merited.

5. This application was canvassed vide written submissions where the plaintiff argued that he is a man of straw and that no prejudice will be occasioned if the court allows payment by installments.

6. The respondents on the other hand claimed that a party cannot invoke the provisions of Section 3 and 3A of the Civil Procedure where there are specific provisions of law dealing with the matter at hand. That there are clear provisions of law dealing with application for stay of execution of judgment of the court which have not been invoked in this application therefore making this application incompetent and should therefore be dismissed.

7. I have considered the application and the submissions by the parties and the issue for determination is **whether to allow the applicant to pay costs in installments?**

8. Order 21 Rule 12 (1) and (2) of the Civil Procedure Rules, provides

“(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.”

9. Therefore, the power to order payment by instalments of the decretal amount is purely a matter of discretion by the court. However, such exercise of discretion is premised on circumscribed; **sufficient cause shown by an applicant**. The onus of establishing sufficient cause rests on the Applicant.

10. In the case of **JABALI ALIDINA v LENTURA ALIDINA [1961] EA 565** at page 566, it was stated that:-

“All commentators on the Civil Procedure Code agree that the court’s discretion to order payment of the decretal amount in installments is one which must be exercised in a judicial and not an arbitrary manner. The onus is on the Applicant to show that he is entitled to indulgence under this rule”.

11. The applicant herein has simply stated that he has no means of paying. Further, the court has considered that the assessment of costs was done way back on **6.4.2018**. The auctioneers came into the picture in **September 2018**. The question is; What efforts did the applicant make there in between to defray the costs?. There is not the slightest evidence to indicate that the applicant mitigated his situation. An allegation has also been raised that Applicant has instructed an advocate to file for him another suit against the respondent in C.M.C.C 269 of 2018. Applicant is mute on this issue.

12. I find that applicant has not shown sufficient cause to warrant the granting of the prayers herein. The application is dismissed with costs to Respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 27TH MARCH, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Ayub for plaintiff

Igweta holding brief for Murango M. for defendant

Plaintiff

Defendant

HON. LUCY. N. MBUGUA

ELC JUDGE