



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO. 431 OF 2010

JARED KANGWANA.....1ST PLAINTIFF

THE MONARCH GROUP LIMITED.....2ND PLAINTIFF

- VERSUS -

SAMSON KEENGU NYAMWEYA.....1ST DEFENDANT

BOKIN HOLDINGS LIMITED.....2ND DEFENDANT

RULING

1. Judgment was entered in this matter on **6th November, 2014** in favour of the plaintiff against both defendants, for **Ksh 6.5 million** with interest and for **Ksh 246,315** being the plaintiff's cost.
2. The plaintiff sought to execute that judgment by way of warrants of arrest issued against the defendant. Warrant of arrest was issued on **17th May, 2016** by the Deputy Registrar of this court.
3. The 2nd defendant has filed a Notice of Motion dated **5th April, 2018** seeking an order to be permitted to liquidate the decretal sum by payment of **Ksh 300,000** monthly instalments until payment in full.
4. The application is made on the basis that the 2nd defendant is unable to pay the decretal sum in one lump payment due to economic hardship in doing business. The application is further made on the basis that the plaintiff has so far paid **Ksh 2.3 million**.
5. The application was not opposed by the 1st defendant.
6. The plaintiff opposed the application by submitting that both defendants should show the court the difficulty they were having in settling the decretal amount. **Mr Makori**, counsel for the plaintiff, conceded that the defendants can be ordered to pay half of the decretal sum and then thereafter to pay **Ksh 500,000** per month until payment in full.
7. Order 21 rule 12 (2) of the Civil Procedure Rules (the rules) is the guiding law for this application. That rule provides:

“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.”
8. It will be noted that since the plaintiff did not consent to the 2nd defendant's application, the 2nd defendant is required under the above rule to show sufficient cause why it should be permitted to pay the decretal sum by instalment.
9. Has the 2nd defendant shown sufficient cause? It will be noted that judgment was entered against both the defendants on **6th November, 2014**. Today the defendants have failed to settle the entire judgment amount. It was not however denied that the defendants have so far paid **Ksh 2.3 million**.
10. The 2nd defendant is a limited liability company. It has advanced an argument that the reason it has failed to settle the entire judgment amount is due to hard economic times. The defendant in advancing that reason, did not provide proof that it was undergoing hard economic times. There was no company accounts, whatsoever, that was submitted to the court.

11. It is also important to note that the 1st defendant, an individual, did not indicate that he is under any hardship. In the absence of such indication, the court can presume that the 1st defendant can indeed settle the judgment amount without any difficulty.

12. The plaintiff, in the absence of sufficient cause being shown, is entitled to enjoy the fruits of his judgment without hindrance. This was recognized by the court in the case of ***Hildegard Ndalut v Lelkina Dairies Ltd & Anor (2005) eKLR***, as follows:

“Both parties have referred to the case of Keshavji Jethabhai & Brothers Limited vs Saleh Abdulla [1959] EA 260, which is a case from a High Court of Tanganyika. That case followed the principles laid down in the Indian case of Sawatram Ramprasad vs Imperial Bank of India (1933) AIR Nag. 33 – 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. This, in my view, is the proper test to apply in granting orders for payment of a decretal amount by way of instalments. A judgement creditor is entitled to payment of the decretal amount, which he should receive promptly to reap the fruits of the judgment. The judgment creditor might genuinely be in a difficult position in paying the decretal amount at once. However, he has to show seriousness in paying the amount. In that event he should show his bona fides by arranging fair payment proposals to liquidate the amount”.

13. The defendants having failed to show sufficient cause why this court should order the decretal sum to be settled by instalment, the **Notice of Motion** dated **5th April, 2018** is therefore dismissed with costs to the plaintiff.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of July, 2018.

MARY N. KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

.....for the Plaintiff

.....for the Defendant