



Sunny Sundry Holiday Home Ltd v Ng'ang'a & another (Environment and Land Case 47 of 2017) [2023] KEELC 22522 (KLR) (13 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22522 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 47 OF 2017
EK MAKORI, J
DECEMBER 13, 2023**

BETWEEN

SUNNY SUNDY HOLIDAY HOME LTD PLAINTIFF

AND

CAROLINE NASWA NG'ANG'A 1ST DEFENDANT

PAUL KIMANI NG'ANG'A 2ND DEFENDANT

RULING

1. The Applicant seeks to have a decretal sum herein of Kshs. 983,188/- (being her part arising from the decree herein) at a monthly installment of Kshs. 50,000/- per month till payment in full. The application is opposed.
2. The applicant averred that they are separated from her husband the 1st defendant and judgment was entered against the duo. She is ready and willing to clear her part of the decretal sum but she is financially unable. She proposes to clear the decretal sum in the manner she has stated at a rate of Kshs. 50,000/= per month pursuant to Order 21 Rule 12(1) (1) and (2) of the *Civil Procedure Rules*.
3. The application is opposed because the applicant has not come to court with clean hands. There is no alleged hardship disclosed by the applicant in this application. No single payment has ever been made since January 2023 to date. A consent order was entered on 25th October 2021 and the applicant was allowed to liquidate the decretal sum by way of installments but has long defaulted and cannot be heard in another plea for liquidation of the decretal sum by way of installments, and the orders for payment in installments are still in place and yet to be set aside.
4. The respondent contended that it would take up to 6 years to clear the decretal sum if such an arrangement as proposed by the applicant was to be sanctioned by this Court.



5. The issue for the determination of this Court is whether to allow the applicant to liquidate the decretal sum herein in installments of Kshs. 50,000/= till payment in full.
6. In considering whether to allow a party to a suit to settle the decretal sum in installments the Court is guided by the principles enunciated in the case of *Rajabali Alidina v Remtulla Alidina & Another* [1961] EA 565 which provides that in considering an application seeking to settle the decretal sum via installments the court should be guided by the following tests:
 - a) The circumstances under which the debt was contracted.
 - b) The conduct of the debtor
 - c) His financial position, and
 - d) His bona fides in offering to pay a fair proportion of the debt at once.
7. This matter was filed in the year 2017 based on a lease between the parties whereby the plaintiff leased premises to the defendants to carry on hotel and restaurant business. The defendants failed to pay rent which shot up to a tune of 3,000,000/=. The defendants were issuing bouncing cheques hence this claim.
8. Judgment was obtained in 2021 against the defendants jointly and severally. A consent was subsequently recorded on 21st October 2021 the applicant was to liquidate the decretal sum in installments. The final date for payment in installments was 8th July 2023. It never happened instead, the current application was filed on 7th July 2023.
9. The applicant has only stated that she is estranged and separated from her co-defendant and she will seek to settle her part of the bargain by paying the executed sum in installments of Kshs. 50,000/- per month.
10. On the flip side, she has not been honouring the consent already in place and has not filed her financial status to show her impecuniosity necessitating the current application. The applicant too has failed to convince the Court why it should depart from the consent order dated 25th October 2021, for the Court to exercise discretion to order payment in installments. The respondent has not disclosed her bona fides in approaching the Court the second time if not the umpteenth time to liquidate the decretal sum in installments. Application dated 8th May 2023 lacks merit and is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 13TH DAY OF DECEMBER 2023.

E. K. MAKORI

JUDGE

In the Presence of: -

Mr. Omwancha for the Applicant

CC. Happy

In the Absence of: -

Mr. Nyongesa for the Defendant

