

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL CASE NO. 120 OF 2010

MARY MARIGU NJUGUNA..... APPELLANT/APPLICANT

VERSUS

WILFRED MBOGO M'MBUI..... RESPONDENT

(An Appeal from the Order of D. MOCHACHE Chairperson issued in Embu Business Premises Rent Tribunal Case No. 21 of 2008 on 16th November, 2010)

RULING

This is a ruling on the application dated the 10th September 2014 seeking for orders that the applicant be allowed to pay the decretal amount in installments of Shs.4,000/= per month until the whole is cleared. The applicant was represented by Mr. Eddie Njiru who argued the application on her behalf. In her affidavit the applicant states that she is sickly and is incurring hefty medical bills and cannot therefore afford to pay the decretal amount in one installment. She says that she has already paid Shs.23,000/= out of the total decretal amount owing of Shs.95,753=.

The application was opposed by the respondent who was represented by Mr. Joe Kathungu advocate. Relying on the grounds of opposition filed on 3/10/2014, Mr. Kathungu submitted that the matter was settled by consent of the parties in October 2013 but the applicant has made no effort to pay the decretal amount save for Sh.8,000/= which was paid a day before the hearing of this application. It was argued that payment of the decretal amount in installments of Shs.4,000/= will take a long time to clear the balance. The offer was not acceptable to the respondent whose medical letter attached to her application was not signed by the doctor.

On perusal of the medical report attached to the application, I find that it bears an official stamp of a medical officer in-charge of Kimbimbi hospital but it is not signed by a doctor. The report bears the letterhead of the hospital and was stamped on 18/8/2014. With the letterhead and the official stamp, the applicant may be given the benefit of doubt. However, her health condition must be weighed against the right for costs awarded by the court on disposal of the appeal.

The record of the court shows the consent by the parties recorded on the 17/9/2013 for costs amounting to Shs.93,200/=. The amount as at 17/10/2013 was Shs.95,573/= which has continued to attract interest. The auctioneer has already attached the property of the applicant which is said to be valued at Shs.1,500,000/=. A great part of the amount of Shs.23,000/= paid by the applicant is said to have gone towards the auctioneers fees. This means the decretal amount has reduced by very little amount which Mr. Kathungu says is only Kshs.8,000/=.

I have carefully considered the arguments of the parties. I am in agreement with the respondent that payment of the amount in installments of Shs.4,000/= will take a long time to clear. It will in fact take more than two years.

The respondent is entitled to his costs and keeping the money for over two years will not be fair to him. It is not possible for him to put the money in any practical use when he receives it in those small amounts. After all, he has already incurred costs in the appeal. I find the offer not reasonable and just to the respondent.

The court declines to allow the application in the terms proposed. However, considering the financial

constrains of the applicant, I will allow payment in installments of KShs.20,000/= per month with effect from 30th November 2014 and thereafter at the end of each consecutive month until the whole amount is cleared and in default, execution to issue.

Costs of this application to the judgment debtor.

DELIVERED, SIGNED AND DATED AT EMBU THIS 27TH DAY OF NOVEMBER, 2014.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Kathungu for the Respondent

F. MUCHEMI

JUDGE