



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 731 OF 2012

JAMII BORA SCANDINAVIA AB:PLAINTIFF

- VERSUS -

RICHARD G. NJOBA:1ST DEFENDANT

THEMIS INVESTMETNS LTD.:2ND DEFENDANT

RULING

1. The application before the court is a **Notice of Motion** dated **11th January 2013**. It seeks the following orders:-
 1. Judgement be entered against the Defendants as prayed in the Plaintiff.
 2. The Defendants be allowed to pay to the Plaintiff monthly installments of Kshs.200,000/= for a period of four months first.
 3. Thereafter, the monthly installments be reviewed upwards.
 4. Costs of this application be provided.
2. The application is premised on the grounds that the Defendants do not dispute the Plaintiff's claim but that the Defendants are currently facing financial constraints but are willing to pay the debt due to the Plaintiff in a scheduled manner.
3. The application is supported by affidavit of the 1st Defendant MR. RICHARD G. NJOBA dated 14th January 2013 and a Supplementary Affidavit dated 19th February 2013. In the said affidavit the Defendants admit owing the amount claimed in the Plaintiff of Kshs.7,570,085.60/= together with interest accruing at the rate of 20% per annum from 1st November 2012, but they seek to repay the same by a monthly installment of Kshs.200,000/= for a period of four months first, and thereafter propose to raise the rate upwards.
4. The Plaintiff/Respondent has opposed the application through a replying affidavit dated 5th February 2013.
5. I have carefully considered the application and opposing affidavits and submissions. The Plaintiff does not object to Judgement being entered for it as prayed in the Plaintiff or in terms of prayer 1 of the application. However, the Plaintiff has given reasons in the affidavit as to why it objects

prayers to repay the same by installments of Kshs. 200,000/=.The Plaintiff believes that the Defendant's request to pay the loan by installment is neither bona fide nor serious and is merely meant to delay the repayment of the Plaintiff's loan.

6. To my knowledge, however, a party wishing to repay a loan by installments is obligated to justify the plea, and show both vide affidavit and annexures of account why the court should consider such a request. To my knowledge no evidence of real financial hardship or genuine effort to satisfy the Plaintiff's claim has been shown. The statements of account annexed to the supplementary affidavit of Richard G. Njoba actually show that there are times when the Defendants came into lump sum amounts from which they could have started repaying the current claim. Again the statements of account are not the only means of the Defendant sources of income.
7. In my view, the proposal to repay the loan by Kshs.200,000/= per month for the first four months is not *bona fide*, given that the sum claimed is over Kshs.7,500,000/=.
8. To be fair to both parties, the question that a court of law ought to answer when faced with the particular circumstances of the case is the prejudice to be caused to the decree holder by giving indulgence to the debtor. In the matter at hand, it is clear that the debtor has enjoyed the use of the Plaintiff's money for over a period of 2 years. There are correspondences also showing that the Defendant has not honoured various agreements to repay the debt. This is a court of equity. It is one of the premises of equity that he who seeks equity must perform equity. In my finding the Defendants have not performed equity and therefore a court of equity cannot easily come to their rescue.
9. However, equity is a very generous institution. It is prepared to give a benefit of the doubt to the Applicant without necessarily agreeing with the facts put forth by the Applicant. In that regard, and entirely within the equitable jurisdiction of this court, I make orders as follows:-
 - a. Judgement is hereby entered against the Defendants as prayed in the Plaint.
 - b. The Defendants shall have the liberty to liquidate the decretal sum by eight (8) months equal installments commencing from 1st April 2013 till full satisfaction thereof.
 - c. The costs of this application and of the suit shall be for the Plaintiff.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI THIS 18TH DAY OF MARCH 2013

E. K. O. OGOLA

JUDGE

Present:

Mwangi for Plaintiff

Murugara for Defendant

Teresia – court clerk