



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
MISC. CASE NO.468 OF 2011

IN THE MATTER OF THE ADVOCATES ACT

AND

IN THE ADVOCATES REMUNERATION ORDER

AND

IN THE MATTER OF THE ADVOCATES CLIENT BILL OF COSTS

SINGH GITAU ADVOCATES.....ADVOCATE

VERSUS

CITY FINANCE BANK LIMITED.....CLIENT

REASONS FOR RULING

1. On 27th May 2013, I allowed the Client/Applicant's Application dated 21st May, 2013 and ordered that the client pays the Advocate/Respondent the decretal sum in four (4) monthly installments together with the accrued interest. That such installments should be paid as follows ;-
 - a. On 31st May, 2013 – Kshs. 2,000,000/=
 - b. That the balance of Kshs.5,384,192/82 be paid in three equal installments together with the accrued interest thereon on 30th June, 2013 , 31st July, 2013 and 31st August, 2013, respectively.
 - c. That in default of any installment, the entire sum shall be due and payable and execution to issue.
 - d. That the Client/Applicant was to pay the Auctioneers Costs as agreed or as taxed by the Deputy Registrar, if not agreed.

These now are the reasons for the said decision.

2. The Application before the Court was a Notice of Motion dated 21st May, 2013. In that Motion, the Client sought to be allowed to liquidate the decretal sum of Kshs.7,384,192/82 by monthly installments of Kshs. 500,000/= with effect from 15th June 2013 or such other reasonable installments as the Court would deem fit. The Motion was supported by the affidavit of Fred Chumo sworn on 21st May, 2013.
3. It was deposed that Judgment against the Client was entered for an aggregate sum of Kshs.8,283,769.05 together with interest at the rate of 14% per annum from 20th December, 2011 until full payment. The Client contended that it was a Bank that had in the past faced serious financial challenges which consequently led to it being placed under statutory management. Mr. Njoroge, Learned Counsel for the Client, submitted that his client was in the process of restructuring and as such was only able to return a profit for the first time in ten (10) years of Kshs.52,331,000/= in the financial year ending 31st December 2012. That on this premise the Client should be allowed to pay the decretal amount by way of installments to avoid unnecessary disruptions or strain that would be caused by the lump sum payment of the decretal amount to the Advocate. The Client also contended that the Advocate would not be prejudiced by the Orders sought. In a bid to demonstrate that it had acted bona fides, the Client submitted that it had already made a payment of Kshs.2,509,902/72 to the Advocate upon the entry of the Judgment of Kshs.8,263,760/05 but on another suit.
4. The application was opposed by the Advocate through a Replying Affidavit of James Gitau Singh sworn on 23rd May 2013. It was contended that the Motion was bad in law and without merit. The Advocate averred that he had been retained by the Client to undertake various legal matters on its behalf until the change of the Client's Shareholding and Management. A dispute as to legal fees thereafter ensued leading to varied attempts to negotiate the outstanding bills of costs by the parties, which proved futile. This culminated in the Advocate filing enforcement suits in several matters wherein Judgments were entered against the Client. It was the Advocate's contention that the Client had used several ploys to frustrate him in the collection of his legal fees which, inter alia, included lodging the instant application.
5. That further, upon perusal of the Client's financial statement attached to the Application, the Advocate was of the opinion that the Client Bank was not ailing financially. That the Bank's statement that was provided by the Client indicated that the Client had ready cash amounting to Kshs.1,000,000,000/= and that further to this, a provision for payment to Advocates had been made in the Client's financial statements. Mr. Singh thus submitted that the Client had illustrated that it had bona fides ability to pay the decretal sum and as such, the interest of the Advocate as the Decree Holder should be paramount. It was further contended that the Advocate had refrained from submitting fee notes during the Client's financial doldrums between the years 2000-2008, as he awaited the Client's financial position to improve. As such, the Advocate prayed that the Application be dismissed with costs.
6. Having considered the Affidavits on record, the submissions by Counsel and the various authorities relied on, I allowed the application on the basis that the Court has discretion to allow a Judgment Debtor to settle a judgment debt by installments after passing a decree. Order 22 Rule 12 (2) of the Civil Procedure Rules 2010 which was relied on provides that:-

12. (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 installments 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. (Emphasis Added)

7. From the above provision it is clear that the Court has the discretion, after sufficient cause is demonstrated, to order the payment of the decreed amount by way of installments. This discretion should however be exercised in a judicious manner. See the Case of **A. RAJABALI ALIDINA – VS- REMTULLA ALIDINA & ANOTHER (1961) E.A 565.**
8. It is trite law that apart from looking at the peculiar circumstances of the case, the Court when considering what sufficient cause amounts to must consider a number of factors. This includes

- how the debt was incurred, the bona fides of the Judgment Debtor, the financial position of the debtor and the judgment creditor, the conduct of the parties and the hardship that may result from enforcing the decree. It is also my considered view that applications of this nature ought to be made without undue delay.
9. On the first circumstance, it is clear that the debt was incurred by Judgment Debtor through a client - advocate relationship. Between that there were various enforcement suits filed by the Advocate in pursuit of his outstanding fees. Judgment was rendered in the Advocate's favour for the aggregate sum of Kshs.8,283,769/05. The Client contended that it had in the past faced financial constraints and was in the process of recovery. That in the foregoing, the requirement to pay the said decretal amount should be made by way of installments to avoid unnecessary disruptions or strain on the Client's path to full financial recovery.
 10. The Client furnished the Court with various documents to demonstrate its alleged financial difficulties. Indeed from the same, it was clear that the Client was placed under Statutory Management culminating into the entrance of new investors who bought into the Client Bank and set it up with a new management. It is also clear from the Audited Accounts for the year ended 31st December 2012, that the Client was able to make a profit as compared to its previous financial year ending 31st December 2011.
 11. However from the scrutiny of the Audited Accounts for the financial year ending 31st December 2012, it may be true as urged by Mr. Singh, that the Client may have some cash reserves in excess of Kshs.1,000,000,000/=. Though on the path to recovery, Court was mindful of the Client's previous financial hardship and the fact that it is only beginning to recover from near collapse having only turned a profit last year. It is thus important to build investor confidence in the said institution and also protect the various depositors and borrowers with the Client Bank. The Client in my opinion did demonstrate sufficient cause to pay the decretal sum in installments.
 12. It is for the foregoing considerations that the court rejected the clients proposed instalments of Kshs.500,000/= per month from 15th June, 2013 until payment in full. If this proposal were to be accepted, it would have taken the Client about one and a half years to pay the Advocate. This in my view was a very long period which would have caused unnecessary hardship on the part of the Advocate who is rightfully entitled to his legal fees given the length of time he has had to wait for the payment of the same. Indeed justice should be done to all parties and the Court cannot be said to have done justice by merely leaning exclusively in favour of the debtor. The Advocate has rights that must also be balanced against those of the Client. To this end, the Court was of the view that a period of three months was reasonable in the circumstances. The instalments ordered by the court were not so burdensome to the Client nor was the period of three (3) months too long a period for the Advocate to wait.
 13. Finally, in terms of when the Application was made, the Client made the application only after the execution process had issued against it. However, the Court took cognizance of the fact that the Client had taken steps towards liquidating other Judgments obtained by the Advocate and had already paid a sum of Kshs.2,509,902/72 to the Advocate. To my mind, this illustrated the Client's willingness to pay the decretal sum and was a sign of good faith on its part.
 14. For the foregoing reasons, I was therefore satisfied that the Application should be allowed upon such terms as I had ordered on 27th May 2013. Those then were the reasons for allowing the said application.
 15. **DATED** and **DELIVERED** at Nairobi this 19th day of July, 2013.

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A. MABEYA
JUDGE

