



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 1111 OF 2001

INTERBROKE INSURANCE BROKERS LIMITED ::::::::::::::::::::: PLAINTIFF

VERSUS

JOHN G. MUTHUA *training as* MUTHUA ENTERPRISES ::::: DEFENDANT

R U L I N G

1. The Application before the court is dated **11th October 2013**. It seeks the following orders:-
 1. ***That this application be certified urgent and be heard ex-parte in the first instance.***
 2. ***That there be a stay of execution of the decree herein pending the hearing and determination of this application.***
 3. ***That this honourable court be pleased to allow the Applicant to liquidate the decretal amount herein in monthly instalments of kshs.10,000/= until payment in full.***
 4. ***That the costs of this application be provided for.***
2. The Application is premised on the grounds set out therein mainly that the Applicant is facing financial difficulties and is unable to pay the decretal sum. In the meantime the Plaintiff is likely to execute the decree and that if that happens then the Applicant will be prejudiced.
3. The application is supported by affidavit of **JOHN GITHII MUTHUA** dated **11th October 2013** and a supplementary affidavit dated **7th November 2013** in which he expands on above grounds and prays for the orders sought.
4. The application is opposed by affidavit of **PETER KAMAU KIRIBA** filed in court on **5th November 2013**.
5. On **8th November 2013** parties appeared before me for the hearing of the application and left the decision in the hands of the court choosing to rely fully on their various affidavits.
6. Briefly the facts of the application are that on **12th May 2011** the court delivered a Ruling in favour of the Plaintiff against the Defendant for Kshs.443,062/= together with costs and interests. This Ruling gave rise to the decretal sum now standing at Kshs.514,543/=. Initially the Applicant herein sought to set aside the said Ruling which was arrived at after an ex-parte hearing. However, the Applicant has since abandoned this cause and now only seeks leave to pay the same by instalments of kshs.10,000/= per month. To show good faith the Applicant has already paid to the Respondent a lump sum of Kshs.150,000/= as per annexure "**JGM1**" in the Applicant's further affidavit dated **7th November 2013**. The Applicant now seeks the leave to pay the balance by monthly instalments of Kshs.10,000/=.

7. The Respondent has opposed this application stating that the Respondent is entitled to enjoy the fruits of the Judgement immediately. The suit was filed in the year 2001 and it is over 12 years and the Respondent has been waiting for justice which should now not be delayed.
8. Further the Respondent submits that the Applicant has not demonstrated to this court that it cannot pay the decretal sum in lump sum. No bank statements have been attached, and no documents have been put forth to show the Applicant's financial predicament.
9. I have considered the application and submission of the parties. For an application for leave to pay a debt by instalment, it is the requirement that the Applicant demonstrates the financial inability. This can be done by demonstrating financial statements over a period of time, or by showing that the trade in which the Applicant is involved has collapsed or is generally doing very badly to enable the court to consider the application favourably.
10. There is absolutely no attempt in this application to show the financial position of the Applicant. The alleged financial distress of the Applicant is a mere statement which this court finds difficult believing. Further the Ruling in this matter was delivered on 12th May 2011. It is more than two years outstanding. This court is a court of equity. Whoever comes to court of equity must also be prepared to do equity. The Applicant is asking for something he himself is not prepared or willing to give.
11. The above sentiments notwithstanding, and in complete discretion of my equitable jurisdiction, I am prepared to allow, which I hereby do, leave to pay the decretal sum due (after factoring any payments which may have now been made) in four (4) equal monthly instalments with effect from 1st January 2014 until payment in full.
12. The costs of this application shall be for the Respondent.

DATED, READ AND DELIVERED AT NAIROBI THIS 5TH DAY OF DECEMBER 2013.

E. K. O. OGOLA

JUDGE

PRESENT:

Wanyama for Plaintiff

M/s Ndirangu for the Defendant

Teresia – Court clerk