



**Korir v Chebet (Environment & Land Case 230 of 2017)
[2022] KEELC 13400 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13400 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 230 OF 2017
EO OBAGA, J
SEPTEMBER 29, 2022**

BETWEEN

RAYMOND KIMELI KORIR APPLICANT

AND

ROBERT CHEBET RESPONDENT

RULING

Introduction

1. This is a ruling in respect of a Notice of motion dated 3rd March, 2021 in which the Judgment Debtor/ Applicant seeks the following orders:-
 1. Spent
 2. The warrant of arrest be suspended.
 3. Orders made on 27/1/2021 be reviewed and set aside.
 4. The Defendant be permitted to liquidate the decretal sum through monthly installments of Kshs 50,000/= till payment in full.
 5. Costs of the application be in the cause.

Background:

2. The Judgment Debtor/Respondent herein is the beneficial owner of LR. No. Karun/Sosiani Block 5/(Kapkures)/92 measuring 7.8 hectares. On 31st March, 2014, the Applicant and the Decree holder/ Respondent into a sale agreement in which the Respondent agreed to purchase 2.5 acres at Kshs 1,050,000/= which amount was paid in full. Later on 18th September, 2015, the Respondent purchased an additional 0.5 acrs at KShs 270, 000/= which amount was paid in full.



3. In the year 2016, the Respondent planted wheat on the purchased land whereby he harvested 62 bags. The Applicant convinced the Respondent that he was going to sell the wheat and pay him Kshs 195,300/= The Applicant sold the wheat but did not pay the Respondent. The Respondent filed suit against the Applicant for an order of specific performance or in the alternative a refund of purchase price and other monies owed.
4. The Applicant who had been duly served did not enter appearance. The Respondent proceeded to obtain judgment for the liquidated sum. The judgment was later set aside and the Applicant was allowed to file defence. In the defence filed by the Applicant he admitted the Respondent's claim. The Respondent thereafter moved the court and obtained judgment on admission. The Applicant tried to set aside the judgment in vain.
5. The Applicant did not pay the decretal sum. A notice to show cause was duly served but the Applicant did not comply. A warrant of arrest was issued and the Applicant was arrested and brought before court on 27th January, 2021 whereby he paid a sum of Kshs 210,000/= and proposed to pay the balance in installments as follows:-
 - a. Kshs 500,000/= before 15/2/2021
 - b. Kshs 300,000/= before 31/3/2021
 - c. Kshs 100,000/= before 30/4/2021
 - d. Kshs 1,047,000/= before 30/11/2021
6. The Applicant did not pay a single instalment as agreed. He instead moved to court seeking the orders in paragraph 1 hereinabove.

Applicant's contention:

7. The Applicant contends that he was not served with notice to show cause which required him to attend court on 3rd March, 2020. He also contends that the commitment he made on 27th January 2021 was made under duress and extreme pressure as he was under threat of being committed to civil jail.
8. The Applicant argues that his income cannot allow him to meet the amount he committed to pay and that he is only able to pay Kshs 50,000/= per month. He argues that his financial situation was aggravated by the covid 19 pandemic. He therefore prays that the orders of 27th January, 2020 be reviewed and he be allowed to liquidate the decretal sum by monthly instalments of Kshs 50,000/=

Respondent's contention

9. The Applicant's application was opposed by the Respondent through a replying affidavit sworn on 26th March, 2021. The Respondent contends that the Applicant's application is frivolous, vexatious and devoid of merit. The Respondent states that the Applicant has come to court with unclean hands and that he is only out to frustrate him from realizing the fruits of his judgment.
10. The Respondent argues that the Applicants claim that he committed himself to pay under duress is a gimmick geared towards hoodwinking the court.

Analysis and determination

11. I have carefully considered the Applicant's application and the opposition to the same by the Respondent. I have also considered the submissions by the parties. There are two issues which emerge for determination. The first is whether the consent recorded on 27th January, 2021 ought to be set



aside. The second is whether the Applicant should be allowed to liquidate the decretal sum by monthly instalments of Kshs 50,000/=

12. In the case of *Inter-Counties Importers and Exporters Limited - Vs- Teleposta Pension Scheme Registered Trustees & 5 others* (2019) eKLR, the Court of Appeal while dealing with an application to set aside a consent judgment quoted the case of *Brooke Bond Liebig - Vs- Mallya* (1975) EA 266 where Mustafa Ag. VP stated thus:-

“The compromise agreement was made an order of the court and thus a consent judgment. It is well settled that a consent judgment can be set aside only in certain circumstances, e.g or grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract...”

13. In the instant case, the Applicant seeks to have the consent order set aside on the ground that he entered into the same through duress or extreme pressure. It is true that a consent which is obtained through duress can be set aside. I have looked at the record of proceedings of 27th January, 2021 before the Deputy Registrar. It is the Applicant who proposed that he be allowed to liquidate the decretal sum by way of instalments. The counsel for the Respondent sought for time to consult her client on the same. Later when the court re-convened, the parties entered into a consent which was recorded as order of court. The Applicant paid Kshs 210,000/= on the day of consent recording and voluntarily committed to pay the balance in the manner agreed.
14. Though the Applicant had been arrested on 26th January, 2021 and brought to court on 27th January, 2021, there is nothing to show that he was under any duress to enter into the consent. As the background of this case shows, the Applicant is a man who is out to use the court process to delay the realization of the decretal sum. The Applicant is a man who received payment for the land he was selling but he could not give the land. Even the wheat which he offered to sell on behalf of the Respondent which he did but did not remit the proceeds to the Respondent is a pointer of a man who has scant respect to commitment of his obligations. I therefore find that there was no duress or pressure at the time he entered into the consent. I decline to review or set-aside the consent.
15. On the issue as to whether the Applicant should be allowed to liquidate the decretal sum by monthly instalments of Kshs 50,000/=, I find that there is no basis for allowing him to do so. The Applicant is a man who has 7.8 hectares at his disposal. He has assets like tractors. This is a man able to generate reasonable income from the land and his other sources. He was paid the entire purchase price without any issue. His conduct is that of a man who wants to receive but not give out. Taking the totality of the circumstances of this case, I decline to allow him to liquidate the decretal sum by monthly instalments of Kshs 50,000/=

Disposition

16. From the above analysis, it is clear that the Applicant’s application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF SEPTEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;



Ms. Kosgey for Mr. Omboto for Respondent.

Court Assistant –Albert

E. O. OBAGA

JUDGE

29TH SEPTEMBER, 2022

