

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 440 of 2002

**HAGGAI OMONDI OKETCH TAMBO T/A TAMCON CONSULTING
ENGINEERS.....PLAINTIFF**

VERSUS

**MOSES MAC OWITI.....
.....DEFENDANT**

RULING

The defendant the judgment debtor herein on making an applicant for stay pending appeal was granted stay by this courts ruling of 25th April 2006. That stay was conditional on the defendant's deposit of the decretal amount in an interest earning account in the names of the parties advocates. The Defendant was given a period of 30 days to make that deposit. By an application by Notice of Motion dated 24th November 2006 the Defendant seeks the extension of time for depositing the decretal amount. The defendant in addition seeks that he be allowed to deposit the decretal sum into a fixed deposit account in five equal monthly installments of kshs 300, 000 commencing the 22nd of December 2006. In submissions the defendant counsel stated that the Defendant was seeking to deposit the amount of kshs 150 per month in that account. It is obvious that the submissions were not consistent with the prayer in the application. That as it may, be the Defendant stated that he had made every effort to raise the decretal amount within the period given but experienced financial constraints. He however stated in his affidavit that he is confident of raising kshs 300,000 commencing on the 22nd of December 2006 and thereafter on every subsequent 22nd day of the month, he would deposit a similar amount into the fixed joint account. The defendant annexed post-dated cheques to prove his assertions. He also attached Bank Statements to show his inability to pay the whole decretal amount as ordered.

The application was opposed and in the plaintiffs view the defendant delayed in making the present application which was filed on the eve of the 30th day period of stay that the defendant had been granted. For that inordinate delay, the plaintiff sought that the application be dismissed.

I have considered the application and the one thing that the plaintiff was unable to controvert is that the defendant annexed to his affidavit Bank statements to show the financial constraints he is under. I am of the view that there will be no prejudice that will be suffered by the plaintiff in granting an order for the payment of the decretal amount by installments. I am however of the view that such payments should be made to the plaintiffs advocate who shall retain the same until the whole decretal amount is paid and once paid open a joint interest earning account in the both names of the parties advocates. The order of this court is as follows: -

- 1) That the defendant is granted an extension of time to deposit the decretal sum in an interest earning account in the names of the parties advocates as follows:**
 - a) The defendant shall forward to the plaintiffs advocate the amount of kshs 600, 000 immediately which amount represents the installments for 22nd December 2006 and 22nd January 2007.**
 - b) The defendant shall thereafter forward to the plaintiff on the 22nd day of each succeeding month kshs 300, 000 until payment in full of the decretal amount.**

c) On the plaintiff advocate receiving from the defendant the whole decretal amount they shall proceed to open a joint interest earning account in the names of the advocates for the plaintiff and defendants respectively.

d) In default of any one payment the stay granted to the defendant shall automatically vacate and the plaintiff will be at liberty to execute for the balance of the decretal amount.

2. The costs of the Notice of Motion dated 24th of November 2006 shall be borne by the defendant.

Dated and delivered this 26th day of January 2007.

MARY KASANGO

JUDGE