



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI MILIMANI LAW COURT

MISCELLANEOUS APPLICATION 469 & 426 OF 2004

MAMICHA & COMPANY ADVOCATES..... PLAINTIFF

VERSUS

KENYA KNITTING & WEAVING MILLS.....DEFENDANT

CONSOLIDATED WITH

MISC. APPLICATION NO. 426 OF 2004

MAMICHA & COMPANY ADVOCATESPLAINTIFF

VERSUS

MOTEX KNITWEAR MILLS LIMITEDDEFENDANT

RULING

This is an application by the client for stay of execution and payment of the decretal sum in installments of KShs.100,000/= per month with effect from December, 2005 till payment in full. The application has been brought under the provisions of Order XXI of the Civil Procedure Rules Section 3A of the Civil Procedure Act and all other enabling provisions of the Law. One of the enabling provisions of the Law is Order XX Rule 11 of the Civil Procedure Rules which had not been invoked in the Chamber Summons under consideration.

The application has been made on the primary ground that the client has offered to liquidate the decretal sum in both HCMISC. Application No. 426 of 2004 and this application by monthly installments of KShs.100,000/= which is really not a reason at all.

The application is supported by an affidavit sworn by one Raj Joshi a director of the client company who depones that the total sum due in both applications is KShs.1,206,283/= which the client has offered to liquidate as stated above. He has further deponed that to show the company's commitment twelve postdated cheques of KShs.100,000/= each had been forwarded to the Advocates but had been rejected.

Confronted with a replying affidavit sworn on behalf of the Advocates stating that no reasons had been given for the application to pay by installments, the client filed a Supplementary Affidavit in which it is deponed that it is servicing a loan with Kenya Commercial Bank Limited. To the Supplementary

affidavit is annexed a letter written by the client company to Kenya commercial Bank seeking confirmation of the sum due which according to the client was KShs.13,088,000/= as at 13.12.2005. Servicing of the said loan according to the client leaves it in “a situation in capable of completely liquidating the instant debt hence the prayer to pay by way of installments.”

The Advocates did not respond to this supplementary affidavit. I have therefore no reason to doubt the client’s indebtedness to Kenya Commercial Bank Limited. Under Order XX Rule 11 (2) of the Civil Procedure Rules, the Court has a discretion to order payment of the decretal amount by installments. The discretion however is not absolute. The judgement debtor must show sufficient cause. In **A. Rajabali Alidina – vs- Remtulla Alidina and Another [1961] EA 565** the predecessor of the present court of Appeal held **inter alia** that:

“a debtor must show sufficient reason for indulgence and the matters to be taken into consideration by the Court are the circumstances in which the debt was incurred and the financial position, conduct and bona fides of the debtor.”

The parties in the case at hand have an Advocate/Client relationship which in my view is a special relationship. It would appear that the suit giving rise to this Misc. Application is still pending determination. The Advocates may still act for the client and if not the client may have to seek alternative representation for which fees will still be demanded. Taking all the circumstances into consideration, I am persuaded that there is a case for installments. The client purposes to pay KShs.100,000/= per month and has already paid KShs.300,000/=. On the other hand the Advocates would accept payment of the sum due in three installments of about KShs.300,000/=. I have considered both proposals and have come to the conclusion that monthly installments of KShs.150,000/= would serve the ends of justice. I accordingly order that the client pays the balance of the decretal sum in both applications in monthly instalment of KShs.150,000/= with effect from 10.4.2006 if the sum of KShs.100,000/= for March has already been paid as offered by the client. In the event that the March payment has not been made by the client, the monthly installments ordered herein should commence from 20.3.2006. In default of payment of balance of the decretal amount as hereby ordered, the plaintiff is at liberty to execute the decrees in whatever manner it deems fit. Pending compliance execution is stayed.

The client shall pay costs of this application and costs of execution if any.

Orders accordingly.

For avoidance of doubt this Ruling also covers HC Misc. Application Number 426 of 2004.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF MARCH, 2006.

F. AZANGALALA

JUDGE

17.3.2006