



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA**

**Civil Case 129 of 2002**

**FIRST NATIONAL FINANCE BANK LIMITED .....  
PLAINTIFF**

**- Versus -**

**1. KERSAM LIMITED**

**2. MOHAMED FARAJ MOHAMED**

**3. SALIM SHERMAN ..... DEFENDANTS**

**Coram: Before Hon. Mr. Justice L. Njagi**

**Mr. Kassim Shah for Respondent**

**Mr. Mogaka for 1<sup>st</sup> Defendant**

**Mr. Nyongesa for 3<sup>rd</sup> defendant**

**Court clerk – Kinyua**

**R U L I N G**

The application before the court is made by way of a chamber summons dated 16<sup>th</sup> November, 2005, and taken out under Order XXII rule 22, and Order XX rule 11 of the Civil Procedure Rules. The applicants, who are the 1<sup>st</sup> and 3<sup>rd</sup> defendants in the suit, pray that this Honourable court be pleased to order that the applicants do liquidate the decretal sum of Kshs. 600,000/= in equal monthly instalments of Kshs. 5,000/= until payment in full.

The application is supported by the annexed affidavit of Salim Sherman, the 3<sup>rd</sup> defendant, and is based on the grounds, inter alia, that the plaintiff has obtained judgment against the 1<sup>st</sup> and 3<sup>rd</sup> defendants on the basis of the consent recorded on the 13<sup>th</sup> October, 2005 for an all inclusive sum of Kshs. 600,000/=. Secondly, the 1<sup>st</sup> and 3<sup>rd</sup> defendants are unable to pay the decretal sum at once due to the fact that the 1<sup>st</sup> defendant wound up its business and operations and the 3<sup>rd</sup> defendant has many judgments entered against him which ought to be discharged. However, he is willing and ready to pay the decretal amount in monthly instalments of Kshs. 5,000/=. The final ground upon which the application is based is that the 3<sup>rd</sup> defendant is on the brink of being declared bankrupt for failure to satisfy his financial obligations.

These grounds are amplified in the annexed affidavit of the third defendant aforesaid. That affidavit points a very sad picture of the applicant and his business operations. According to the deponent, the first defendant had its registered offices and place of business at Ambalal House. However, it closed its business and operations in 2001 following a distress levied on its office equipment as a consequence of non-payment of rent arrears. The deponent's personal inability to pay the decretal amount is mainly because he has been sued in various other cases where judgments have been entered in some of them against him and the judgments remain unsettled to date. His residential house was auctioned by Barclays Bank Limited in August, 2001, in exercise of that bank's statutory power of sale for unsatisfied loan

advances subsequent to his execution of a charge over the house.

As a result of severe financial constraints, the deponent's as well as the first defendant's accounts have been closed. The deponent has no regular employment at the moment but depends entirely on donations from friends, relatives and other well wishers for his upkeep and general survival. Currently, he is staying in a house owned by one of his daughters who has agreed to temporarily provide shelter to the third defendant and his wife in the hope that his financial situation will improve for the better. It is on account of this gloom that the applicant seeks to be allowed to pay the decretal amount by monthly instalments of Kshs. 5,000/=.

I have considered the plight of the applicant who, according to the incontroverted evidence he has placed before the court, is no more than a man of straw at the present time. Hopefully, his financial plight might yet improve with the passage of time. True, if his application is allowed, it will take a cool ten years before he can pay the decretal amount. To take him to civil jail is to waste good money after bad. Until his lot improves, I see little or no alternative but to allow him to pay the decretal sum by the paltry sum he has offered. If and when his financial circumstances improve, he should reciprocate this gesture by offering to pay something substantial.

For the above reasons, it will become necessary to mention this matter every so often in order to ascertain whether the applicant's fortunes have changed for the better. I accordingly grant prayer 3 of the application and order that the 1<sup>st</sup> and 3<sup>rd</sup> defendants/applicants do liquidate the plaintiff's claim in monthly instalments of Kshs. 5,000/= from today until further orders.

This matter be also mentioned every six months from today until further orders.

Dated and delivered at Mombasa this 7<sup>th</sup> day of July, 2006.

L. NJAGI

JUDGE