



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**COMMERCIAL DIVISION, MILIMANI**  
**CIVIL CASE NO. 283 OF 2001**

**CALTEX OIL KENYA LIMITED.....PLAINTIFF**

**VERSUS**

**NOAH ARAP TOO T/A**

**KERICHO CALTEX SERVICE  
STATION.....DEFENDANT**

**R U L I N G**

On 24th January, 2005, after hearing inter partes the Defendant/Judgment- Debtor's application by chamber summons dated 1st November, 2004, I dismissed the application with costs and reserved my reasons for delivery on 4th March, 2005. I now give those reasons.

The application, said to be brought under section 3A of the Civil Procedure Act, and also under Order XX, Rule 11 of the Civil Procedure Rules (the Rules) sought the main order that the Judgment-Debtor be allowed to liquidate the decretal sum by monthly instalments "starting with a sum of Kshs. 1 million followed by equal monthly instalments of Kshs.250,000/= with effect from 30th November, 2004." The application was made upon the grounds that the Judgment-Debtor cannot raise the full decretal sum at once; and that he is ready and willing to settle the decretal sum. The Plaintiff/Decree- Holder opposed the application.

The Decree-Holder's suit was for recovery of Kshs.4,320,907/55, costs and interests, the same being on account of petroleum products sold and delivered to the Judgment-Debtor in 1995. It was pleaded that in part-payment the Judgment/Debtor issued several cheques to the Decree-Holder which were dishonoured when presented for payment. The Judgment-Debtor filed defence to the claim. He denied that petroleum products were sold to him as alleged, or that he owed the sum claimed. He also denied issuing any cheques.

On 20th January, 2004, after the court heard inter partes an application for summary judgment, it entered judgment for the Decree-Holder as prayed. An application for stay of execution pending appeal was dismissed on 28th June, 2004. On 27th May, 2004 the Decree-Holder's costs had been taxed by consent at Kshs.210,000.00.

The Judgment-Debtor made this application nearly a year after judgment was passed against him. It is my considered view that applications of this nature ought to be made without undue delay as a show of good faith. The Judgment-Debtor made his application only after execution process issued against him. In the meantime he had made no effort at all to liquidate the decretal sum. He gave no reason in his supporting affidavit for this state of affairs. True, the Judgment-Debtor has made some effort, after filing the application, towards paying the decretal sum. But why were such efforts not made until the Decree-Holder moved to execute?

A Judgment-Debtor coming to court for indulgence under Order 20, Rule 11(2) of the Rules must first and foremost show absolute good faith and that he is not merely seeking to delay the course of

justice. Although the court will no doubt consider the Judgment-Debtor's personal hardship, nevertheless it will be mindful of the fact that the Decree-Holder is entitled to realize the fruits of his judgment, notwithstanding that in the eyes of the Judgment-Debtor the decree-holder is rich and does not need the money as badly as the Judgment-Debtor does.

Having considered all matter placed before the court I found no merit in the Judgment-Debtor's application and dismissed it for the reasons given above.

**DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2005.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS .....DAY OF MARCH, 2005.**