



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
Civil Case 106 of 2003**

NJERI ONYANGOPLAINTIFF

VERSUS

PATRICK MUSIMBADEFENDANT

R U L I N G

This application, by way of Chamber Summons, dated 26/4/04, under Order 20 rule 11(2) of the Civil Procedure Rules seeks three orders:-

1. Stay of Execution.

2. Grant of an order for payment of the decretal sum by instalments of K.shs.50,000/= per month until satisfaction of the decree in full.

3. Costs in the Cause.

The application is supported by an Affidavit of Patrick Musimba of even date, and on the grounds that:

- (a) the applicant is ready and willing to satisfy the decree in instalments
- (b) the applicant is unable to pay the huge decretal amount in lumpsum.
- (c) it is fair and just for the court to direct payment as prayed for – by instalments

In opposition, the Respondent, avers: that the application is only designed to frustrate the execution of the warrant in satisfaction of the decree; that applicant/objector live together with the judgment debtor as husband and wife.

I have looked at the pleadings in this case and the applicant appears to be an honest and straightforward person. This is evidenced by his statement of affair, which is not challenged by the Respondent. In an application of this nature the court should be guided by what would effectively but fairly resolve the disposition of the decretal sum. To require a judgment debtor to repay the sum by a manner that is beyond his financial ability taking into account his needs as a human being and family commitments can lead to the total destruction of the applicants sense of justice and fairness for which our judicial system stand.

I have taken into account the submissions of counsel for both sides, and the authorities relied on, and in my view, the income of a company or companies ran by the applicant should not be mixed with the statement of the affairs of the judgment debtor. The applicant is, in law, totally different from the companies. Besides, the debts are those of the applicant, not the companies of which he is or may be a

shareholder or employee.

In this particular case, I have also noted that the debts were incurred over a period and by instalments. It was a debt incurred as a lumpsum. The applicant, has demonstrated willingness to pay the decretal amount. That willingness should not be destroyed by terms which either increase the burden or ignore the overall circumstances of the case.

For all the foregoing reasons, this court grants the following:-

- 1. Grants an order for the payment of the decretal sum by instalments of K.shs.50,000/= per month until satisfaction of the decree in full. The payment to be without interest and/or the as on 20/4/04.**
- 2. Grants a Stay of execution.**
- 3. Costs of the suit herein to be in the Cause, but without interest thereon.**

DATED and delivered in Nairobi this 27th day of May 2005.

O.K. MUTUNGI

JUDGE

O.K.