

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

CIVIL SUIT NO. 5631 OF 2000

ABDUL ALIM MUSA AYUB PLAINTIFF

V E R S U S

1. AMANI K.A. RUTODEFENDANTS

2. SALIM RUTO T/A.....DEFENDANTS

HASABI FOODSTUFFS SUPPLIERS

R U L I N G

Defendant/decree debtors have applied under Order XX rule 11 and 20 and Section 3A for an order to allow them to liquidate decretal amount shs. 680,000/- by monthly instalments of shs. 50,000/- each. The record shows that on 20.12.2000 the defendant admitted the debt and offered to pay by monthly instalments of shs. 30,000/- each. In the statement of claim dated 15.11.2000 shows that there was an agreement from the beginning of the contract for payment of the amount by monthly instalment of 100,000/-.

The decree-holder swears that no instalment has ever been paid since the date of agreement and that the cheques given initially were all unpaid upon representation to the bank.

The reasons why the decree debtors are unable to pay full amount is stated as illness of 2nd defendant who has been sick since February 2000 and, his the hospitalization has taken a lot of money from the business and the resources of the first defendant are all going to meet the cost of medical treatment. It is also said that the business is not doing well because of the country wide economic slump. I have perused supporting affidavit and annexures thereto and it is evident that the expenditure on medical treatment of 2nd defendant were all during the year 2000. And that this application was only made in May this year (2002). No payment of instalments has been offered to show good faith on the part of the decree debtors. There is no information supplied as to the financial position of the business now. The case of **Ayub Salyani & others –vs- Sherahli Haji Saleh & another HCC. No. 375 of 1997 (Hon. J. Waki)** wherein previous authorities on the issue are reviewed is cited. I am of the view that the applicants have not shown any good faith in this matter and have caused delay to the plaintiff who is entitled to the fruits of judgment without so much delay. The interests of the decree-holder also matter and particularly in this case where the decree debtors obtained the vehicle of decree /holder without any payment.

In the circumstances I do not see any sufficient reason to allow the application which is hereby dismissed with costs.

Dated this 24th day of June 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Mr. Kariuki and Mr. Chigiti present