

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1831 OF 1993

PABECO ENTERPRISES LIMITED PLAINTIFF

VERSUS

JASWINDER SINGH t/a

JASWINDER SINGH ENTERPRISES 1ST DEFENDANT

JASWINDER SINGH ENTERPRISES LTD. 1ST OBJECTOR

TEJPAL SINGH VIRDI 2ND OBJECTOR

GURBUX SINGH SURI 3RD OBJECTOR

RULING

The application before me arises from a decree issued by this court on 4.2.2000 pursuant to a judgment entered in favour of the plaintiff against the defendant for Shs.1,512,380/= together with interest thereon at 0.1% per day from 1st April 1993 till payment in full. The decree extracted by the plaintiff's advocates shows that interest on the principal sum of Shs.1,512,380/= was Shs.3,756,131.90 as at 19.1.2000. The dispute giving rise to this application centers around how that interest has been calculated, with the applicant/defendant complaining that the calculations are faulty and have resulted in an excessive interest. More specifically, the defendant complains that instead of charging interest at Shs.1,512,38 per day which is the correct daily interest in shillings on the principle sum of Shs.1,512,380/= as ordered by the court, interest was erroneously charged at Shs.5,269/= per day thereby grossly inflating the amount payable.

The decree holder's response to the judgment debtor's complaint is that the judgment debtor's advocates were given ample time as provided in the Civil Procedure Rules to approve the decree but having declined to approve the decree, the decree holder applied, as he was entitled to, the Deputy Registrar of this court for approval of the decree in accordance with O. XX Rule 7, (2) and (3) of the Civil Procedure Rules. Following that application the Registrar duly approved the decree and thereafter execution followed.

The defendant's other point was that it had taken quite a while to obtain certified copies of proceedings in the matter and because of that delay, the defendant ought to be allowed time, through an order of stay of execution, so that it can prosecute an appeal against the decision of this court, notice of which had already been filed. In that regard, it was submitted for the defendant, that since the principal sum ordered to be paid had been deposited in an account in the joint names of the decree holder's and judgment debtor's advocates, the decree holder was not exposed to the risk that the decretal sum might not be paid.

Having perused the decree in the course of considering this application, I can see absolutely nothing to support the complaints made by the judgment debtor. In my view, the decree that has been extracted is in accordance with the judgment of this court and clearly what the judgment debtor says cannot possibly be correct. With regard to the process of approving the decree, it is clear that the judgment debtor was given an opportunity to approve the decree but it declined to do so. In those circumstances the decree holder was entitled to apply to the Deputy Registrar of this court for approval of the decree in accordance with the provisions of O. XX Rule 7(3) of the Civil procedure Rules.

As for the alleged delay in obtaining certified copies of proceedings, I note that the judgment was

delivered on 17.1.2000 since which date there does not appear to have been any serious effort on the part of the defendant to obtain the proceedings. I do not therefore consider that the decree holder is very serious in pursuing the matter. I am not satisfied that the applicant has shown that substantial loss may result to the judgment debtor unless the order of stay of execution is made. The application lacks merit and is dismissed with costs.

Dated at Nairobi this 23rd day of March, 2001.

T. MBALUTO

JUDGE