

REPUBLIC OF KENYA

**Software Distributors Africa Limited v Lantech Limited
High Court Of Kenya At Nairobi
November 30, 2000.
Milimani Commercial Courts**

T Mbaluto, Judge

Civil Case No.1048 Of 2000

November 30, 2000 T Mbaluto, Judge delivered the following judgment

This application has been brought under Order 20 rules 11 (2) and 20 of the Civil Procedure Rules for the following orders:-

1. That this court be pleased to postpone payment of the decretal amount; and
2. That this court be pleased to allow the judgment debtor to settle the balance of the decretal amount together with interest accruing therein by six equal monthly installments commencing October 31, 2000.

The grounds upon which the application is based are that the judgment debtor has remained ready and willing to pay the debt but unfortunately it is experiencing serious cash flow constraints due to the current economic situation; that it is currently undergoing a restructuring process which will involve the injection of capital and acquisition of equity by substantial investors; that execution of the decree will cause the judgment debtor irreparable damage and finally that the applicant/judgment debtor has shown good faith by paying an amount of US\$.22,000 to the decree holder before commencement of the execution process for which no credit has been given.

There has also been filed in support of the application an affidavit sworn on August 28, 2000 by David Geteru Gatana, Chief Executive of the applicant. The affidavit gives details of what the applicant is doing to secure funds, some of which it is claimed will be utilized to liquidate the decretal amount.

In opposition to the application, the decree holder says that the applicant is not serious in paying the decretal amount and has used negotiation with other parties for the injection of new capital to the applicant as an excuse to delay payment. In support of that contention learned counsel for the respondent observed that the debt has been outstanding since 1999 that and instead of settling it, the judgment debtor has been giving a litany of promises, all of which have been broken.

Having gone through the application filed herein together with the annexures thereto I am far from being satisfied that sufficient reason had been shown for the order sought. I say so because what the applicant seems to have engaged in since the passing of the judgment in favour of the respondent on July 31, 2000 are delaying tactics. In my view the applicant has had ample time to arrange payment of the decretal amount but up to date it has not paid anything.

In the exercise of its discretion under Order XX rule 11 of the Civil Procedure Rules this court is obliged to balance the conflicting interests of the decree holder against those of the judgment debtor. Bearing that in mind, I have reached the conclusion that the circumstances of this matter do not justify the grant of the order sought. Accordingly I must disallow the application with costs to the respondent.