



REPUBLIC OF KENYA



**Saronera Limited v Were & 2 others (Civil Case E321 of 2022)
[2023] KEELC 20295 (KLR) (2 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20295 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL CASE E321 OF 2022
EK WABWOTO, J
OCTOBER 2, 2023**

BETWEEN

SARONERA LIMITED PLAINTIFF

AND

MOHAMED ABDI WERE 1ST DEFENDANT

HUSSEIN HASAN AMIN 2ND DEFENDANT

JOSEPH NAMADA SIMONI 3RD DEFENDANT

RULING

1. The 2nd Defendant moved this court vide an application dated 5th July, 2023 seeking orders of stay of execution and to set aside the terms of consent dated 17th May, 2023 allowing the Defendants to complete payment of the balance of Kshs 13,000,000/= within a further period of 45 days.
2. The application was premised on the grounds that the applicant has in good faith shown commitment in settling the claim and due to the current economic conditions and non-payments from suppliers, the 2nd applicant seeks an extension of time to comply.
3. The application was opposed by the plaintiff who filed a replying affidavit sworn by Stephen Njoroge Gikera on 11th July, 2023.
4. The application was canvassed by way of written submissions. The Plaintiff filed written submissions dated 27th July, 2023 through the firm of Gikera & Vadgama Advocates while the 2nd Defendant filed written submissions dated 20th July, 2023 through the firm of Abdirazak & Co. Advocates.
5. The Applicant submitted that he has made tremendous effort to comply with the settlement of the claim and has so far paid Kshs 7,000,000/= to the Plaintiff. According to the applicant, this in itself is a demonstration of good faith and if granted 45 days, he will be able to clear the entire amount.



6. It was also submitted that the applicant has satisfied the conditions to warrant a grant of stay of execution.
7. The Plaintiff submitted that the Defendants entered into the consent voluntarily and were never coerced or intimidated into signing the said consent. It was also submitted that Courts have pronounced the grounds for variation of a consent judgment or contract to include fraud, collusion, illegality, mistake, an agreement being contrary to the policy of the court, absence of sufficient material facts and ignorance of material facts. Reliance was placed to the following cases which the Court has considered; *Isaac Kamau Ndirangu v Commercial Bank of Africa* [2002] eKLR, *Arinaitwe v Kalsi & 2 others* [Environment & Land Case No 243 of 2017 [2022], KEELC 13651 (KLR) (13 October, 2022) and *Upways Investment Limited v HF Group (formerly Housing Finance Company of Kenya Ltd & 2 others* [2020] eKLR.
8. I have considered the application and I have also considered the written submissions that have been filed. The issue for consideration is whether this Court should proceed to grant the Defendants 45 more days to settle the claim pursuant to the consent judgment dated 11th May, 2023.
9. The circumstances under which a consent judgement can be set aside were well captured in the case of *Brookbond Liebig (T) Ltd v Mallya* (1975) EA 266 where the Court of Appeal for East Africa stated as follows: -

“The circumstances in which a consent judgment may be interfered with were considered by this court in *Hirani v Kassam* (1952) 19 EACA 131 where the following passage from *‘Seton’ on ‘Judgements and Orders’*, 7th Edition Vol 1, P.124 was approved:

“prima facie any order made in the presence and with the Consent of Counsel is binding on all parties to the proceedings or action and or those doing under them and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court, or if the consent was given without sufficient material facts or in general for a reason which would enable the Court to set aside an agreement.’

“As Windham J said in the introduction to the passage quoted above from Hirani’s case, a court cannot interfere with a consent judgement except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.”

10. In its decision in *SMN v ZMS & 3 others* [2017] eKLR, the Court of Appeal again stated as follows:
 - “17. There is no dearth of authorities on the law governing the setting aside of consent judgments or orders.... Generally, a court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties.”
11. The Court of Appeal went on to cite with approval various cases on grounds for setting aside consent judgment and orders such as *Flora N. Wasike v Destimo Wamboko* [1988] eKLR, *Board of Trustees National Social Security Fund v Micheal Mwalu* [2015] eKLR amongst other authorities.
12. In the instant case and as earlier stated, the 2nd Defendant seeks the court to extend time for compliance with the consent order. I have carefully considered the applicant’s affidavit filed in support. There is no evidence adduced to the effect that there was any misrepresentation, fraud, collusion, lack of ignorance or any other factors that would invalidate an otherwise lawful bargain. The consent order was agreed



upon voluntarily between the parties. This Court cannot therefore interfere with the terms agreed by the parties.

13. In view of the foregoing, I find no merit in the application dated 5th July, 2023 and the same is hereby dismissed. Each party to bear own costs of the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF OCTOBER 2023.

E. K. WABWOTO
JUDGE.

