



**Akiba Bank Limited v Kenya Orient Insurance Company Limited & another (Civil Case 552 of 1998) [2025] KEHC 10699 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10699 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 552 OF 1998  
F GIKONYO, J  
JULY 3, 2025**

**BETWEEN**

**AKIBA BANK LIMITED ..... PLAINTIFF**

**AND**

**KENYA ORIENT INSURANCE COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**IDDYA CHADERAPRAKASH-SYRVANA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Interpretation of judgment**

1. The 1<sup>st</sup> defendant filed the notice of motion dated 18<sup>th</sup> February 2025, seeking interpretation of the judgment by the court and an order that the amount payable to the respondent as per the decree is Kshs. 117,968,756/-.
2. The 1<sup>st</sup> defendant also seeks an order for payment of the decretal sum by way of instalments of Kshs, 1,500,000/- per month until payment in full and that interest stops accruing from the date the principal amount was paid.
3. The application is premised on the grounds outlined in the application, the supporting affidavit sworn by the 1<sup>st</sup> defendant's legal and secretarial manager, Marian Killu on 18<sup>th</sup> February 2025.
4. The grounds are that on 11<sup>th</sup> May 2018, the court delivered judgment in favour of the plaintiff in the sum of USD 461,468.90 or its equivalent in Kenya Shillings as at 2<sup>nd</sup> July 1998, together with interest at 12.5% per annum from 2<sup>nd</sup> July 1998 until payment in full and costs of the suit.
5. Dissatisfied, the 1<sup>st</sup> defendant appealed and on 2<sup>nd</sup> August 2024, the Court of Appeal upheld the High Court's decision.



6. There is a need for the court to interpret the judgment as the decretal sum has been inflated from Kshs. 117,968,756/- to Kshs. 255,269,482.37/-. The latter amount does not reflect what was ordered in the judgment.
7. The respondent has rejected the applicant's proposal to pay the decretal sum in instalments, despite its explanation that it is unable to pay in lump sum due to financial hardships, as depicted in its past three years' financial statements shared.
8. The respondent has demanded payment of the full decretal amount, computed as Kshs. 255,269,482.37/- and costs of Kshs. 12,763,474.12, yet to be taxed as at the date of the application.
9. The applicant is willing to settle the outstanding amounts by monthly instalments of Kshs. 1,500,000/- till payment in full and has demonstrated goodwill by paying Kshs. 67,000,000/- between November 2024 and February 2025. Another payment of Kshs.1,500,000/- was made on 17<sup>th</sup> March, 2025 making a total payment of Kshs.68,500,000/
10. If the application is not allowed, the applicant stands to suffer substantial damage that could hamper the company for continuing to be a going concern.
11. The applicant relied on:-
  1. *Charles Thys v Herman Steyn* [2006] eKLR
  2. *Keshavji Jethabhai & Bros Ltd v Saleh Abdulla* [1959] EA 260
  3. *A. Rajabali Alidina v Remtulla Alidina & Another* (1961) EA 565

## Response

12. In opposition to the application, the plaintiff/ respondent filed grounds of opposition dated 25<sup>th</sup> February 2025 and written submissions dated 2<sup>nd</sup> May 2025. It contended that the application is scandalous, irrelevant and oppressive, and is for dismissal.
13. The respondent asserted that the Decree is for US\$ 461,468.90 as it was a Dollar Facility, and the 1<sup>st</sup> defendant is not entitled to a change of the "or" in the Decree. It also asserted that the use of the conjunction "or" was not for the applicants to choose what sums to pay but for its election
14. The respondent submitted that a Decree cannot be interpreted to the disadvantage of a Decree-Holder, but instead must always be interpreted to the advantage of the Decree-Holder.
15. The respondent argued that applicant has had numerous opportunities since 1998 to argue that the paying currency was Kenya Shillings equivalent and not US Dollars, and even as at 5<sup>th</sup> August 2024, the plaintiff correctly understood the decretal sums to be in US Dollars.
16. The respondent contended that the application wholly fails to establish a legal basis to interpret the decree as it seeks and is too late, given that the judgment was delivered on 11<sup>th</sup> May 2018 and the decree issued on 25<sup>th</sup> July 2018.
17. The respondent submitted that there is no basis to allow the 1<sup>st</sup> defendant to liquidate the decretal sums in the paltry monthly sums it seeks.
18. The respondent relied on:-
  1. *Beluf Establishment v The Attorney-General*, Civil Appeal No. 134 of 1986
  2. *Ingra v National Construction Corporation* [1987] KLR 652



3. [\*Diamond Star General Trading LLC v Ambrose D O Rachier carrying on business as Rachier & Amollo Advocates\*](#) [2018] KEHC 9034 (KLR)
4. *Keshvaji Jethabhai & Bros Limited v Saleh Abdulla* [1959] EA 260
5. [\*Nicholas Gitonga Murongi v Susan Wairimu & 4 Others\*](#) [2021] eKLR
6. [\*Freight Forwarders Ltd v Elsek & Elsek \(K\) Ltd\*](#) (2012) eKLR

### **Analysis and Determination**

19. The issues for determination are:-
  1. What is the conversion rate of the decretal sum?
  2. Whether the applicant should be allowed to pay the decretal sum in instalments?
20. The first issue involves the interpretation of the judgment. I do note the respondent's complaint about the delay on the part of the applicant to raise concerns about the currency or conversion rate of the decretal sum.
21. However, I also note that the applicant had pursued an appeal, and that the Court of Appeal's decision was given on 2<sup>nd</sup> August 2024. The instant application is dated 18<sup>th</sup> February 2025. Between November 2024 and February 2025, the applicant paid Kshs. 67,000,000/- out of the decretal amount. Thus, the delay in raising the issue is not inordinate and there is a satisfactory reason for the delay. Therefore, I will move on to the interpretation of the judgment.
22. The guiding principles for the interpretation of a court order were underscored in *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) Trollop JA, cited in [\*Amuga and Company Advocates v Kisumu Concrete Products Limited\*](#) [2021] eKLR, as follows: -
 

“...the basic principles applicable to the construction of documents also apply to the construction of a Court's judgment or order: the Court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual well-known rules. As in the case of any document, the judgment or order and the Court's reasons for giving it must be read as a whole in order to ascertain its intention. If on such a reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it. Indeed, in such a case not even the Court that gave the judgment or order can be asked to state what its subjective intention was in giving it. But if any uncertainty in meaning does emerge, the extrinsic circumstances surrounding or leading up to the Court's granting the judgment or order may be investigated and regarded in order to clarify it...

It may be said that the order must undoubtedly be read as part of the entire judgment and not as a separate document, but the Court's directions must be found in the order and not elsewhere. If the meaning of an order is clear and unambiguous, it is decisive, and cannot be restricted or extended by anything else stated in the judgment.”
23. The contested part of the judgment is the disposition, reproduced below:-
 

“(39) In the result, I find merit in the Plaintiff's claim for the sum of USD 461,468.90 or its equivalent in Kenya Shillings as at 2 July 1998 together with interest as at 12.5% per annum from 2 July 1998 until payment in full. Accordingly,



Judgment is hereby entered in the Plaintiff's favour in that sum of US 461,468.90 or its equivalent in Kenya Shillings as at 2 July 1998, together with interest at 12.5% per annum from 2 July 1998 until payment in full and costs of the suit."

24. The respondent contended that a Dollar Facility must be refunded in the same currency. It objected to the application of a conversion rate spanning 29 years, arguing that it would be an egregious violation of its legitimate expectation as a bank and of its investors and customers, who have been kept out of the foreign currency for over 29 years.
25. A close reading of the judgment as a whole and the disposition in specificity tells that the respondent's argument that the exchange rate of the decretal sum should be as at the date of payment contradicts the judgment.
26. The court spelled out that the entry of judgment was for "US 461,468.90 or its equivalent in Kenya Shillings as at 2 July 1998"
27. The court did not say "or its equivalent in Kenya Shillings at the time of payment".
28. Hence, I find that the currency conversion rate applicable to the decretal amount of US 461,468.90 is Kenya Shillings as at 2 July 1998.

#### **Payment by instalments**

29. I will now address whether the applicant should be allowed to pay the decretal sum instalments.
30. Order 21 Rule 12 of the *Civil Procedure Rules*, provides that:-

"After passing of any such decree, the Court may on the application of the judgment-debtor and with the consent of the decree holder or without the consent of the decree holder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made by installments on such terms as to the payment of interest, the attachment of the property of the judgment debtor or the taking of security from him, or otherwise as it thinks fit"
31. In determining the issue, I am guided by the key considerations, set out in *In Keshvaji Jethabhai & Bros Limited v Saleh Abdulla* [1959] EA 260, as follows:-

"The Court will consider the circumstances under which the debt was contracted, the conduct of the debtor, his financial position, and so forth, and installments should be directed where the defendant shows his bona fides by offering to pay anything like a fair proportion of his debt at once.

...

"Whilst the courts must be zealous of the creditor's rights, they must consider each case on its merits and exercise the discretion accordingly... Hardship to a debtor might in some circumstances be taken into consideration on an application for payment by instalments; it is a question in each case whether some indulgence can fairly be given to the debtor without unreasonably prejudicing the creditor."
32. According to the applicant, the decretal amount is Kshs. 117,968,756. It has paid Kshs. 68,500,000/- as of March 2025. The applicant has proposed to pay the outstanding amount of Kshs. 49,468,976/- in instalments of Kshs. 1,500,000/- per month until payment in full.



33. In the respondent's estimation, the payment by proposed instalments would take over fifteen years with accruing interest.
34. The applicant cited financial challenges as the reason for its request, supported by financial statements. The court has to balance between the hardship by considering whether the indulgence sought would prejudice the decree holder.
35. The respondent argued that the reliance on statements of accounts of 2023 is irrelevant to its current financial standing. The respondent propounded that an insurance company, like a bank, cannot be said to be insolvent to meet its financial obligations. Otherwise, it ought to lose its Regulatory Licence. It cannot enter into corporate guarantee contracts and then renege on them, as this would erode the importance and validity of corporate guarantees.
36. The court recognizes that corporate guarantee contracts ought to be strictly complied with to promote certainty and reliability in the financial sector.
37. The court also recognises that the present application is made, post-judgment under Order 21 Rule 12 of the *Civil Procedure Rules*, which allows the judgment debtor to apply to pay the decretal sum in instalments. Therefore, the court's discretion to consider whether to allow the payment by instalments has kicked in.
38. The applicant has shown good faith in making payments in instalments between November 2024 and March 2025. However, in my view, the proposal for payment of Kshs. 1,500,000/- by instalments, stands to prejudice the respondent as there has been undue delay in payment of the decree and such paltry payments will only prolong the delay. Thus, the instalment proposed are not reasonable given the balance owed.
39. In the interests of justice, I will allow the application, in the following terms: -
  1. The applicant will pay an initial lump sum of Kenya Shillings Twenty Five Million (Kshs 25,000,000) within 30 days from the date of this order.
  2. The applicant will pay the balance in monthly instalments of Kshs. 1,500,000 until payment in full.
  3. Interest will continue to accrue on any unpaid sum until payment is made in full.
  4. The applicant shall bear the costs of the application because they are seeking the respondent's indulgence.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS  
ONLINE APPLICATION THIS 3<sup>RD</sup> DAY OF JULY, 2025**

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**F. GIKONYO M**

**JUDGE**

In the presence of: -

Ms. Anyango for Kipkorir for respondent

Waweru Gatonye for defendant/applicant absent

Kinyua C/A

