



**Regal Equipment Ltd v Lyna G. Ventures Ltd (Civil Case
259 of 2018) [2024] KEHC 8805 (KLR) (Civ) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8805 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 259 OF 2018

JN MULWA, J

JULY 15, 2024

BETWEEN

REGAL EQUIPMENT LTD DECREE HOLDER

AND

LYNA G. VENTURES LTD JUDGMENT DEBTOR

RULING

1. The Applicant Lyna G Ventures Limited/Defendant in the suit approached the court by Application dated 20/12/2023 seeking orders:-
 1. Spent
 2. Spent
 3. Spent
 4. That this honourable court be pleased to give directions on the applicable Dollar exchange rates when implementing the ruling dated 24/11/2023 having regard to the fact that the Plaintiff pleaded that the applicable exchange rate is Kshs. 104.00/-
2. A brief background to prayer no. 4 above is necessary for parties to appreciate the totality of the dispute before the court.
3. On 15/08/2017, the parties herein entered into a sales agreement for some machinery for the sum of USD 197,180.00 payable by two installments on or before 7/09/2017 and on or before 7/10/2017. The sale agreement is annexed as exhibit No. REL.-1
The Applicant defaulted in the payments resulting to filing of this suit by the plaintiff.



4. Upon application, on 15/8/2017 judgment on admission was entered for the plaintiff against the defendant for USD. 114,409.24 plus interest at court rates from date of filing the suit on 26/09/2019. A decree was drawn on 22/10/2019 – exhibit No. REL -2 in US dollars 83,219.13, which sum remains unpaid at the date of this application.
5. This sum is agreed to by both parties as due and owing to the decree holder by the judgment debtor that essentially ought to have been paid in 2017 at the then agreed rates in USD. The court notes that both the agreement and the court's decree are expressed in USD.
6. Prayer no. 4 in the instant application seeks directions from the court as to whether the interest rates agreed upon in the agreement at 104 Kenya Shillings to the USD should be applied to the outstanding debt at exchange rates provided by Central Bank of Kenya in 2024 and more particularly July, 2024.
7. The Applicant's /judgment debtors submissions dated 23/05/2024 are that the date the outstanding amount was found due by the Deputy Registrar on 29/10/2018, the currency exchange rate was Kshs. 156 USD and further directed the judgment debtor to pay the amount in monthly installments of USD 7,000/= until payment in full.
The applicant deposited a sum of Kshs. 500,000/= in court as security on 21/12/2023.
8. It is therefore the applicant's submissions that the applicable rate remains as Kshs. 104 per USD as stated in the agreement arguing that a court cannot rewrite a contract entered between parties as they are bound by their agreement unless it is found to have been entered into fraudulently or by coercion which are subject to proof, upon being pleaded citing the cases; *South Nyanza Sugar CO. Ltd v. Leonard O. Arera* [2020] eKLR; and Court of Appeal case of *National Bank of Kenya Limited v Pipe Plastics Samkolit (K) Ltd* [2020] 2 E. A; *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* [2017] eKLR among others.
9. The court is urged to exercise its discretion and find that the parties having fixed the applicable exchange rates, they are bound by their contract and declare that the applicable exchange rate as regards payment of the balance of the decretal sum is Kshs. 104 per USD.
The Respondent/Defendant did not file submissions.
10. It is trite, as expressed by the Court of Appeal in *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Suprar* that:

“It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain”
11. Additionally, in *Pius Kimaiyo Langat v Cooperative Bank* (Supra) the court expressed itself thus:-

“We are alive to the hallowed legal maxim that it is not the business of courts to rewrite contracts between parties. They are bound by the terms of their contracts unless coercion, fraud or undue influence are pleaded and proved”.
12. None of the parties herein have told the court that the contract was not voluntary or that it was tainted with fraud or illegality or frustration which would have by all means changed the express contractual obligations that may have made it incapable of being performed in this case by the Judgment Debtor.



13. The fact that judgment was obtained from an admission by the Defendant/Applicant is an expression that indeed the Defendant was bound by the terms of the Contract entered between them as elucidated in the case of *Kenya Airways Limited v Satwant Singh Flora* [2013] eKLR.
14. I have perused the plaint dated 29/10/2018 that initiated the suit herein. The plaintiff sought judgment against the defendant for USD 158,463.70 together with interest at two percent 2% per month from 8/10/2018 until payment in full.
15. Nowhere did the plaintiff seek to alter/vary or apply a different exchange rate from that agreed by the parties in the agreement they both voluntarily executed on 15/08/2017.
16. In the said agreement (contract) which I have also perused, whereas each party's obligations and liabilities are well spelt, the issue of exchange rates as to their application taking cognizance that the contract was to be bound by Kenyan Laws and further being in the knowledge of the parties that exchange rates change over time as a result of the USD strength vis-a-vis the Kenya shilling, the parties found it fit to expressly agree on the exchange rate and not to include a default clause to the effect that the exchange rate would be determined at the time of payment of any outstanding sums outside the stated period of payment.
17. For the foregoing, I am not persuaded by the Respondent/Plaintiff that the exchange rate expressly provided in the contract between the parties ought to be interfered with. I decline to accept such invitation.

The court therefore finds that the agreed exchange rate at the sales time of agreement time of being 140 shillings to the USD shall therefore be the exchange rate to be applied in the implementation of the Deputy Registrar's ruling dated 24/11/2023 and upto full payment of the decretal sum.

Each party to bear own costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JULY, 2024.

JANET MULWA

JUDGE

