



Hakken Consulting Limited & 2 others v Seven Seas Technologies (Nigeria) Limited & another (Civil Case 287 of 2015) [2024] KEHC 11003 (KLR) (Commercial and Tax) (20 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11003 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 287 OF 2015
FG MUGAMBI, J
SEPTEMBER 20, 2024**

BETWEEN

**HAKKEN CONSULTING LIMITED 1ST PLAINTIFF
HAKKENIT S.A 2ND PLAINTIFF
CARLOS OLIVERIA 3RD PLAINTIFF**

AND

**SEVEN SEAS TECHNOLOGIES (NIGERIA) LIMITED 1ST DEFENDANT
SEVEN SEAS TECHNOLOGIES LTD 2ND DEFENDANT**

RULING

1. This ruling determines the Motion application dated 21/12/2021, filed by the judgment debtors. The application seeks to have the matter be referred to the Deputy Registrar for reconciliation and that the court exercises its inherent jurisdiction to reduce the sums payable in instalments. The application is opposed by the decree holders.
2. The dispute between the parties originates from a suit filed by the decree holders on 16/6/2015, claiming a sum of USD 265,929.68. The suit was settled through a consent judgment entered on 4/7/2018 for a sum of USD 300,000. Subsequently, a second consent was recorded on 22/5/2019, effectively varying the terms of payment of the decretal amount.
3. It is clear from the application before the court that the said amount remains outstanding, hence the said application.



Analysis and determination

4. The first ground on which the prayer for reconciliation is premised is that the warrants and proclamation issued by the decree holders are erroneous. This is on account of the already settled part of the decretal amount. The judgment debtors state that at the time of filing this application, the amount due was USD 132,547.22 as opposed to USD 176,622 as stated in the warrants and proclamation. They also take issue with a claim by the decree holders' for Kshs. 786,275/= in respect of legal fees. They confirm having paid the said amount on diverse dates in the years 2018 and 2019.
5. I have considered the responses on this ground as filed by the decree holders. For starters, it is my view that there is really no contention about payments that have been made by the judgment debtor. The decree holders by letters dated 10/12/2021 and 26/6/2019 addressed to the Deputy Registrar confirmed to the court that the judgement debtors had paid a total sum of USD 123,378 as at 15/11/2021 and costs of Kshs. 784,000/=.
6. The argument by the decree holders is therefore plausible that even if there was any dispute as to the amount that has already been paid, which there isn't, the judgment debtor ought to show good faith by first of all settling the amount of the claim that is undisputed and then raise the issue once they had paid what is due. In any case, the decretal amount continues to earn interest in the meantime.
7. With respect to the prayer for reduction of the monthly instalments payable by the judgment debtors, the same is premised on the interruption of their business by the COVID pandemic. They confirm that they have been making monthly payments of Kshs. 500,000/=, which they seek to have the court allow them to continue paying, as opposed to the monthly instalments of USD 10,000, which amount was agreed upon by consent of the parties.
8. The decree holder opposes this prayer on the ground that varying of the consent judgment would amount to interference with the parties' agreement. The decree holder further states that the judgment debtors have not satisfied the conditions precedent in setting aside a consent judgment.
9. Amongst the cases cited by the decree holder is the Court of Appeal decision in East African Portland Cement Company Limited V Superior Homes Limited, [2017] eKLR. In its judgment the Court cited with approval from the decision in Hirani V Kassam, (1952) 19 EACA 131, at 134, where it was stated as follows:

“The mode of paying the debt, then, is part of the consent judgment. That being so, the court cannot interfere with it except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.”
10. The Court also referenced the decision in Contractors Ltd vs Margaret Oparanya [2004] eKLR, stating thus:

“This court has qualified or conditional discretion when it comes to interfering with consent Judgments or orders. Moreover, where the consent order or Judgment is still executory, the court may refuse to enforce it if it would be inequitable to do so. The mode of paying the debt, then is part of the consent Judgment. That being so, the court cannot interfere with it except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.”
11. The proposition that the discretion of the court to interfere with consent judgments or orders is qualified is also supported by other decisions including Brooke Bond Liebig Ltd V Mallya, [1975] EA



266, *Flora Wasike V Destimo Wamboka*, (1988) 1 KAR 625 and *Samson Munikah T/A Munikah & Company Advocates V Wedube Estates Limited*, [2007] eKLR 13.

12. In light of these decisions the issue for determination is whether the judgment debtor has shown any sufficient reason for this court to exercise its discretion to set aside the consent orders of 22/5/2019.
13. The only ground pleaded by the judgment debtor is the COVID-19 pandemic, a global catastrophe that impacted the world in 2019 and 2020. With the pandemic now four years behind us, this no longer constitutes a valid reason for failing to honor the decretal amount. I also note that the consent judgment in this case was entered nearly five years ago, yet the decree holders have still not reaped the benefits of their judgment.
14. Justice, being a double-edged sword, must strike fairly on both sides. While the court must remain mindful of the challenges faced by the judgment debtors, it also has a duty to protect the rights of the decree holders, ensuring that they are not unduly deprived of the fruits of their litigation. The balance of justice requires that both parties are treated equitably, with the court upholding agreements made in good faith while considering any legitimate grounds for variation with the utmost caution.
15. Thus, in the absence of any allegation or evidence of fraud, collusion, or an agreement contrary to the policy of the court—these being the well-established grounds for reviewing a consent order—or any other valid reason, this court finds that the judgment debtor is not deserving of the relief sought.

Disposition

16. Accordingly, the application dated 21/12/2021 is dismissed with costs to the decree holders.

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 20TH DAY OF SEPTEMBER 2024.

F. MUGAMBI

JUDGE

