Centurion Engineers & Builders Ltd v Kenya Bureau of Standards (Miscellaneous Application 506 of 2012) [2024] KEHC 12578 (KLR) (Commercial and Tax) (18 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12578 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

MISCELLANEOUS APPLICATION 506 OF 2012

A MABEYA, J

OCTOBER 18, 2024

BETWEEN

CENTURION ENGINEERS & BUILDERS LTD ..... PLAINTIFF

AND

KENYA BUREAU OF STANDARDS ..... DEFENDANT

RULING

1. By a Motion dated 27/9/2024 brought under Sections 1A, 1B and 3A and Order 22 Rule 35 of the *Civil Procedure Rules* and Articles 48 and 159 of the *Constitution*, the decree-holder sought the summoning of Esther Njeri Ngari, the CEO of the judgment-debtor to appear and be cross-examined as to the Judgment-debtor's means and ability to satisfy the decretal sum of Kshs. 565,500,721/20.

2. The grounds thereof were that the decree herein for Kshs. 584,492,094/20 still remains to be settled in the sum of Kshs. 565,500,721/20. That previous garnishee proceedings only realized a total sum of Kshs. 19M odd. That there was jurisdiction for this court to grant the orders sought.

3. The application was opposed vide the affidavit of Miriam Kahiro, the Director Legal Services of the judgment-debtor. That it was unnecessary to summon the Judgment-debtor's CEO as the judgment-debtor is a corporation. That as a Corporation, the information being sought can be accessed first under *Access to Information Act* under section 6 of the *Act*. That further, the corporation is under stringent oversight and scrutiny under the *Public Finance Management Act*, the *State Corporations Act*, and regular audits by the Auditor-General.

4. That the financial records of the judgement-debtor are a matter of public knowledge and notoriety and within the decree-holder's reach. That the nature of the application is meant for private persons and companies but not corporations. That the decree-holder should have first utilized other means of accessing the Judgment-debtor's financial position before resorting to an application under Order

22 Rule 35. The orders sought were oppressive because some of the documents being sought were sensitive in nature.

5. The application was orally argued by Mr. Khaemba for the decree-holder and Mr. Mansur teaming up with Mr. Nura for the judgment debtor. I have considered those submissions alongside the parties' averments.

6. This is an application in execution of a decree. It has been made under Order 22 Rule 35 which provides: -

> " 35. Where a decree is for the payment of money, the decree-holder may apply to the Court for an order that-
>
> a. The judgment-debtor;
>
> b. In the case of a corporation any officer thereof; or
>
> c. Any other person.
>
> be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person and for the production of any books or documents".

7. My reading of the said provision is clear that it applies to all judgment-debtors whether public or private. There is no exception. The fact that the judgment-debtor is a corporation that is stringently audited in financial matters does not exonerate it from the legal process of execution. There is no special treatment for any litigant when it comes to legal process. If it was the intention of the legislature to exenorate any party from any execution process, nothing would have been easier than to expressly state so.

8. It was contended that the decree-holder should have first sought the information sought in the application vide the *Access to Information Act* under Section 6. In my view, that argument does not hold for two reasons. First, that Act was enacted to realize the right to information under Article 35 of the *Constitution* to enable a party enforce a right or freedom under the bill of rights. Secondly, there is nothing in Order 22 Rule 35 of the *Civil Procedure Rules* to show that the said provision is subject to any other provisions.

9. In any event, the *Access to Information Act* is a recent enactment of 2016 while the *Civil Procedure Rules* are of 2010. Nothing is in the *Access to information Act* to suggest that it supersedes all the other legal provisions in other statutes. I reject that contention.

10. This is a very old matter. It is a matter that began from arbitration. It came to this court and went to the Court of Appeal. Indeed, this Court is only executing a judgment of the Court of Appeal. Because of the lethargic and outright refusal on the part of the judgment-debtor to settle the decree, the amount of the decree has been increasing.

11. This court has previously expressed its displeasure with the way public officers manage public financial arising out of Commercial dealings. Once a public entity enters into the commercial arena, it must be prepared to play by the rules. The tendency to delay in settling decrees, postpone the settlement thereof or outright refusal to pay leads to financial bleeding of public entities. The entities end up paying huge sums which would have been avoided were action been taken in good time.

12. In this regard, this Court is agreeable with the decree holder that rather than go in circles the CEO of the judgment-debtor should attend Court and enlighten the Court on how it intends to settle the decree.

13. However, this being a public entity and in public interest, I think before summoning the CEO, the Court should give her an opportunity to comply. Considering the huge amount involved, the court deems it necessary to exercise its discretion and allow the decretal sum to be settled by instalments. It is upon failure to comply that the summons shall issue to the CEO to attend Court accordingly.

14. In view of the foregoing, the Court finds the Motion dated 27/9/2024 to be meritorious and allow the same in the following terms: -

    a. Leave is given to the judgment-debtor to liquidate the decretal sum by instalments as follows: -

        i. The first instalment of Kshs. 100M shall be paid on or before 31/10/2024.

        ii. The balance thereof to be paid in instalments of Kshs. 80M on the 30/11/2024 and on the last day of each subsequent month until payment in full.

    b. In default, the CEO of the Judgment-Debtor shall stand summoned to appear immediately before Court to be cross examined on the means of the Judgment-Debtor to settle the decree herein.

    c. Costs to the Decree-Holder in any event.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF OCTOBER, 2024

A MABEYA, FCI Arb

JUDGE