



**China Sichuan Corporation for the International Techno-Economic
Cooperation Limited v Kigwe Complex Limited (Civil Case 464 of 2012)
[2023] KEHC 2281 (KLR) (Commercial and Tax) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 464 OF 2012
A MABEYA, J
MARCH 22, 2023**

BETWEEN

**CHINA SICHUAN CORPORATION FOR THE INTERNATIONAL TECHNO-
ECONOMIC COOPERATION LIMITED DECREE HOLDER**

AND

KIGWE COMPLEX LIMITED RESPONDENT

RULING

1. Before Court is a Motion on Notice dated May 27, 2022 brought under Article 40 of the [Constitution](#) of Kenya 2010, Section 1A, 1B, 3, 3A & 44 of the [Civil Procedure Act](#), Order 9 rule 9, Order 21 rule 8, Order 22 rule 22 and Order 51 rule 1 of the [Civil Procedure Rules, 2010](#).
2. The applicants sought to liquidate the decretal amount of KShs 25,899,301.60 in monthly installments of KShs 500,000/- and make a down payment of KShs 5,000,000/-.
3. The application was premised on the grounds set out on the face of the application and in the affidavit sworn by David Waiganjo Kigwe. It was contended that the Court issued a decree against the applicant on July 16, 2019 and the respondent had issued a notice of sale of property and execution since there was no stay of execution in place.
4. That the applicant's director was 71 years old and had been unwell which had affected his financial position. He stated that the applicant could not meet the whole decretal sum of KShs 25,899,301.60 and therefore proposed to pay a down payment of KShs 5,000,000/- and settle the balance by monthly installments of KShs 500,000/-. That that the applicant would risk losing his property if the orders sought are not granted.



5. The respondent opposed the application vide a replying affidavit sworn on June 9, 2022 by Fan Bo. He stated that the total decretal sum together with interest was Kshs 53 million whereas the applicant was proposing to pay only Kshs 25 million.
6. That the Court did not have jurisdiction as it was functus officio and could only revisit the figures in an appeal or review application. It was contended that the defendant company did not have sufficient cause for this Court to allow payment in installments.
7. It was further contended that the company was a separate legal entity and the sickness or insanity of the director did not affect the execution process. That the proposal by the applicant was unconscionable as it sought to pay only 25 million shillings as opposed to the total decretal sum of Kshs 60 million.
8. The applicant filed a further affidavit sworn on December 7, 2022 by David Waiganjo Kigwe. He stated that the judgment of the Court was 25 million. However, interest had accrued based on the in duplum rule. He stated that the respondent had refused to accept proposals from the applicant for settlement of the same. That the applicant had approached the respondent with a bank facility for full payment of Kshs 35,000,000/-.
9. The court directed the parties to file submissions within 30 days however the parties did not comply. There were no submissions on record as at the time of writing this ruling.
10. I have considered the application and the responses. The main issue for determination is whether the Court should allow the applicant settle the decretal sum by way of installments.
11. The applicant has moved this court seeking to have the decretal sum settled by monthly installments of Kshs 500,000/ and has proposed a down payment of Kshs 5,000,000/-. The applicant's contention is that it was unable to settle the decretal sum of Kshs 25,899,301.60 because its director was 71 years old and had been unwell and the same affected his financial position. In support of this, the applicant attached medical records.
12. On its part the respondent opposed the application stating that the decretal sum was more than 50 million and not 25 million as quoted by the applicant. That there were justifiable grounds to grant the orders sought.
13. Order 21 Rule 12 of the Civil Procedure Rules 2010, grants the Court power to allow a judgment debtor pay decretal sum by instalments. It provides that: -
 - ' (1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.
 - (2) 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 instalments 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.'



14. In *Hildegard Ndelut v Letkina Dairies Ltd & Another* [2005] eKLR, the court held that: -

' A judgment creditor is entitled to payment of the decretal amount, which he should receive promptly to reap the fruits of the judgment. The judgment debtor might genuinely be in a difficult position in paying the decretal amount at once. However, he has to show seriousness in paying the amount. In that event he should show his bona fides by arranging fair payment proposals to liquidate the amount.'

15. In the present case, on May 30, 2019 the Court entered judgment against the applicant Kshs 25,899,301.60. On November 28, 2022, the parties entered into a consent whereby the terms of sale were settled on the terms that the judgment debtor's property be sold by public auction and the respondent would recover its decretal amount from the sale.

16. This application was filed before the parties had entered into that consent and therefore in my view, the application has been overtaken by events. The orders sought are not capable of being granted on the basis that there is an order directing the mode of payment of the decretal amount.

17. Even if I was wrong on that, the proposal to pay Kshs 500,000/- per month on a decree that was made in 2019 for an amount in excess of Kshs 25 million is too little to be considered as being made in good faith. In any event, the applicant did not demonstrate how it was unable to pay the decreed amount. There were no bank statements provided and accounts to show how the applicant's financial position.

18. The health condition of the applicant's director per se cannot be a basis for ordering the settlement of the decree by instalment. Cogent and sufficient reasons need to be demonstrated of the inability to pay accompanied by good faith and intention to settle the decree. These were lacking in the present application.

19. Accordingly, I find the application to be without merit and dismiss the same with costs.

It is so decreed.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF MARCH, 2023.

A. MABEYA, FCIArb

JUDGE

