



Janet v Mau Tea Multipurpose Co-op Society (Civil Miscellaneous Application E063 of 2024) [2024] KEHC 15934 (KLR) (17 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL MISCELLANEOUS APPLICATION E063 OF 2024
JK SERGON, J
DECEMBER 17, 2024
IN THE MATTER OF DETENTION OF THE APPLICANT
DESPITE COMPLIANCE WITH COURT ORDERS
AND
IN THE MATTER OF KERICHO CMCC CASE NO. E309 OF 2023
AND
IN THE MATTER OF THE HIGH COURT'S SUPERVISORY JURISDICTION AND POWERS
BETWEEN
TURGUT CHEMUTAI JANET APPLICANT
AND
MAU TEA MULTIPURPOSE CO-OP SOCIETY RESPONDENT**

RULING

1. The application coming up for determination is a notice of motion dated 21st November, 2024 seeking for the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) That this honourable court be pleased to order a stay of the execution of the orders issued on 19th November, 2024 and 21st November, 2024 in Kericho CMCC No. E309 of 2023 committing the applicant to civil jail; and order for her release, pending the hearing and determination of the aforesaid suit before the Chief Magistrates' Court.
 - (iv) That this honourable court be pleased to direct that the applicant having given a proposal on the mode of settlement of the debt owed, then parties be allowed to explore the settlement



proposal uncurtailed; or if not satisfied, either party to move the trial court appropriately upon failing to agree on the proposal.

- (v) That necessary directions to issue in the interests of justice.
 - (vi) That the costs of this application be provided for.
2. The application is based on the grounds set out on the face of it and the facts deponed in the supporting affidavit of Turgut Chemutai Janet the Defendant/Applicant.
 3. The Applicant avers that on 19th November, 2024 the Chief Magistrates Court at Kericho, presided over by Hon. F.M. Nyakundi (P.M) in Kericho CMCC No. E309 of 2023, issued orders directing the Applicant to be committed to civil jail for failure to settle and/or give a proposal on the decretal amount being Kshs. 4,409,489/=.
 4. The Applicant avers that immediately upon committal, she called her advocates directing them to apply to the court for her release from civil jail to enable her make a proposal on the settlement of the debt. She also stated that she asked her relatives to deliberate and come up with a tangible proposal on the settlement of the matter. The Applicant further averred that the advocates made the said application to court, however, the attempts to serve the Respondents advocates with the proposal on settlement were futile given time constraints.
 5. The Applicant avers that on 21st November, 2024 before the Respondents advocates could peruse the proposal and after informing the court that she had given a proposal on settlement and her willingness to settle the debt, she was nevertheless committed to civil jail for thirty (30) days.
 6. The Applicant avers that she has been willing to settle the decretal sum, however, her efforts to engage the Respondent with the aim of coming up with a cogent proposal on settlement of the debt have been futile.
 7. The Applicant also averred that she suffers from asthma and blood pressure and therefore any form of incarceration more so when she is ready and willing to give a proposal on the mode of settlement shall be extremely prejudicial to her and her young family. The Applicant avers that some of the members of her family have agreed to dispose of some property to settle the debt and therefore incarceration would hinder these efforts.
 8. The Applicant is therefore seeking to be discharged from civil jail in the interim pending a proposal and mutual understanding on the mode of repayment.
 9. Damaris Cheronon Too the applicant's niece filed an affidavit in support of the application, she set out the chronology of events and depones that her aunt upon committal to civil jail called the family and asked them to deliberate and come up with a tangible proposal on settlement of the matter. The family deliberated and came up with a mode of settlement of the debt and that she unconditionally gives her original title deed with respect to her parcel of land L.R No. Mavoko Town Block 3/4365 to this court as a commitment towards ensuring the repayment of the debt and allows this court to sell the property should the debt remain unpaid.
 10. Patrick Kipngetch Bett the applicant's husband and an employee of Simba Chai Sacco Limited, a cooperative society within Kericho County filed an affidavit in support of the application, he set out the chronology of events and depones that his wife upon committal to civil jail called the family and asked them to deliberate and come up with a tangible proposal on settlement of the matter. The family deliberated and came up with a mode of settlement of the debt and that he commits his payslip to the court as a commitment towards ensuring the repayment of the debt and allows this court to deduct from his salary amounts to be agreed upon should the debt remain unpaid.



11. Turgut Betty Cheronno the applicant's sister and an employee of Britam filed an affidavit in support of the application, she set out the chronology of events and depones that her sister upon committal to civil jail called the family and asked them to deliberate and come up with a tangible proposal on settlement of the matter. The family deliberated and came up with a mode of settlement of the debt and that she commits her payslip to the court as a commitment towards ensuring the repayment of the debt and allows this court to deduct from her salary amounts to be agreed upon should the debt remain unpaid.
12. Jackson Kipkoech Rono an employee of Mau Tea Multipurpose Cooperative Society Limited the Respondent herein filed a replying affidavit in response to the application.
13. He avers that the subject debt dated back to June, 2023 and that the Applicant has severally made undertakings in writing to settle the debt to no avail, thereby necessitating court proceedings which culminated in a judgment and/or decree in favour of the Respondents and her subsequent committal to civil jail.
14. He avers that the willingness of the Applicant to settle the debt notwithstanding, no payment had been made to date.
15. He avers that the Applicant has not furnished them with the proposed mode of settlement.
16. He avers that the Respondent has obtained a decree and rightfully commenced execution proceedings.
17. The matter came up for inter partes hearing and this court directed the parties to canvas the application via written submissions. At the time of writing this ruling the Applicant had not filed her submissions, this court therefore considered the material on record.
18. The Respondents filed their submissions, they contended that the Applicant had not appealed the decision of the trial court.
19. The Respondents contended that the Applicant did not satisfy the conditions for stay of execution. The Respondent contended that security is a mandatory condition to granting stay and that the purpose of security is basically for performance of the decree.
20. The Respondent contended that the Applicant did not deny the existence of the debt and in any event, a judgment and/or decree was issued against the Applicant and that the Respondent had commenced execution in satisfaction of the judgment and/or decree. The Respondent maintained that execution is a lawful process.
21. The Respondent conceded that the Applicant had made several undertakings on the willingness to pay, however, the Applicant has not made any payment thereby substantiating the willingness to settle the debt.
22. The Respondent maintained that the application is not merited and an abuse of court process.
23. I have considered the application, response and submissions by parties and I find that the sole issue for determination is whether to order a stay of the execution of the orders committing the applicant to civil jail.
24. On the issue as to whether to issue an order for stay of the execution of the orders committing the applicant to civil jail, it is the applicant's case that she had acknowledged her indebtedness and therefore the parties ought to be allowed to explore the settlement proposal uncurtailed.
25. The Respondents on their part contended that the Applicant did not satisfy the conditions for stay of execution. The Respondents reiterated that the subject debt dates back to the month of June, 2023



- and that the Applicant has severally made undertakings in writing to settle the debt to no avail, thereby necessitating court proceedings which culminated in a judgment and/or decree in their favour and that they commenced execution in satisfaction of the judgment and/or decree.
26. The Respondents were adamant that willingness to pay the debt notwithstanding, the Applicant had not made any payment thereby substantiating the willingness to settle the debt.
 27. Having considered the argument of the parties, this court notes that the Applicant has not appealed against the decision of the trial court. The Applicant has not met the prerequisite conditions for granting stay of execution as set out in Order 42 Rule 6 of the *Civil Procedure Rules*, the Applicant has not demonstrated substantial loss.
 28. In *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, the court stated that; “No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
 29. The Applicant, despite having filed the instant application timeously, has not offered any security, save for commitments by her family members to ensure that she pays the debt. It is therefore the finding of this court that despite the Applicant having made several undertakings to settle the debt, the debt remains unpaid even following a judgement and/decree in favour of the Respondents.
 30. This court notes that the Applicant is yet to pay any amount towards settlement of the debt and/or furnish a tangible proposal on settlement of the debt in installments, therefore the court is hard pressed to exercise its discretion in favour of the Applicant.
 31. In the case of *Lavington Security Limited, Hildegard Ndelut v Lelkina Dairies Ltd & Another* the court stated 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.”
 32. Consequently, the notice of motion dated 21st November, 2024 is found to be without merit. It is dismissed with costs to the Respondent.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 17TH DAY OF DECEMBER, 2024.

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miruka for the Respondent

Morata for the Applicant

