



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NO. 280 OF 2011

ANNIVERSARY PRESS (K) LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

NATIONAL WATER CONSERVATION & PIPELINE CORPORATION...DEFENDANT/APPLICANT

RULING

1. The application by the applicant dated **24th November 2020** prays for the following orders;

(a) That the court be pleased to grant leave to the defendant to liquidate the undisputed sum of Kshs. 9,450,407 by equal monthly instalments of kshs. 1,200,000 with effect from 21st December 2020 and subsequently on the 20th day of every month till payment in full.

(b) That the court to review the judgement herein in so far as the claimed interest is concerned.

2. The court had earlier issued a conditional temporary injunction namely that the applicant was to pay Kshs 2 million to the respondent which amount it was reported was paid.

3. The application is supported by the affidavit of **Sharon Obonyo** the applicants Managing Director sworn on the same date. The applicant does not dispute the decree herein but its prayer is that due to the hard economic situation after the advent of Covid 19 pandemic, the parastatal has been unable to settle the debt in one lump sum and thus it prays that it be allowed to settle by way of instalments.

4. The applicant further disputes the interest calculated on behalf of the decree holder and prays that the same be reviewed by this court. It urged the court to find that the respondents desire to arrest the Managing Director is made in bad faith and is not only meant to embarrass her but to avoid the process of execution by way of attachment which is supposedly a first line of execution.

5. The respondent on its part has filed grounds of opposition in which it has claimed that the application is made in bad faith and the applicant has for the last 14 years failed to settle the debt. It went on to state that the issue of Covid 19 pandemic is simply a red herring since the debt was accrued before the novel corona virus attacked humanity.

6. It therefore urged the court to dismiss the application since the applicant has not demonstrated its inability to settle the debt and that litigation must come to an end.

7. The parties were then directed to file written submissions which they have complied and the court has had time to peruse the same. Basically all that the applicant is reiterating is that it is a Government agency which depends on an annual budget and therefore it is unable to settle the same in one go. It went on to submit that the law allows any party in a situation the applicant finds itself in to seek the courts redress so as to be allowed to liquidate the amount by way of instalments.

8. The respondent has reiterated the grounds of opposition and argued that it is too late in the day for the applicant to be allowed the prayers sought since over time it has failed to settle the debt. That the applicant has not shown any bona fides effort to settle the decree. That there is no point of the court making any review of the decretal sum especially on the interest as there is no material placed before it for such a review.

9. The parties did cite several authorities which the court has perused. The issue at hand is simple and straight forward, namely whether the applicant should be allowed to settle the decretal sum by instalments. The main reason advanced by the applicant is its inability to pay in one lump sum because of lack of funds as a result of corona virus pandemic and other economic exigencies affecting it.

10. The corona pandemic visited humanity towards the end of 2019 and in this country around February/ March 2020. The government then declared it a national disaster. Judgement in this matter was delivered in favour of the respondent on 9th November 2017 a fact not disputed

by the applicant. Since then the applicant has not made any effort to settle the same. There is no arrangement placed before this court even to settle by way of instalments except through the current application which was necessitated by the applicant carrying out the execution process.

11. In the premises, and although Order 21 Rule 12(2) of the Civil Procedure Rules allows a party to settle by instalments, in this case, the applicant came to this court too late. Actually the applicant came about 3 years after the courts decree was issued yet it was within its knowledge that the respondent by 2006 had finalised the work contracted to undertake.

12. The court in the old case of **KESHAVJI JETHABHAI & BROS LIMITED VS. SALEH ABDULLAH (1959) E. A.** made the following remarks;

“The Court will consider the circumstances under which the debt was contracted, the conduct of the debtor, his financial position, and so forth, and instalments should be directed where the defendant shows his bona fides by offering to pay anything like a fair proportion of his debt at once.”

13. The applicant as found in the above case and in the matter at hand has not made any deliberate effort to settle the debt and has not demonstrated its financial inability. The respondent must have suffered financially seeing that it has taken over 14 years to recover what it had invested.

14. On the question of interest, there is no evidence tendered before this court to suggest that it was excess. The issue of interest is the province of the taxing master and if there was such, which for now i cannot see then it was incumbent upon the applicant to raise it. There is nothing new to permit this court carry out a review of the decree.

15. For the foregoing reasons, the application must fail. The applicant has not placed any evidence before the court to show any difficulty in settling the debt. No accounts were demonstrated to indicate any financial difficulty and finally no efforts after the court’s judgement were shown by the applicant to settle the debt. The applicant must be treated just like any other debtor or creditor. In fact, it ought to be more prudent being a state agency in ensuring fiscal discipline and by and large honouring its financial obligations.

16. The application is dismissed with costs to the respondent.

Dated signed and delivered electronically at Nakuru this 4th day of March 2021.

H. K. CHEMITEI

JUDGE