



**Supplies Services Limited v Muranga Farmers Cooperative Union Limited (Civil Case 304 of 2015) [2021] KEHC 119 (KLR) (Commercial and Tax) (7 October 2021) (Ruling)**

Neutral citation: [2021] KEHC 119 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 304 OF 2015  
WA OKWANY, J  
OCTOBER 7, 2021**

**BETWEEN**

**SUPPLIES SERVICES LIMITED ..... PLAINTIFF**

**AND**

**MURANGA FARMERS COOPERATIVE UNION LIMITED ..... DEFENDANT**

**RULING**

1. The defendant/applicant herein sought the following orders in the application dated 18<sup>th</sup> December 2019: -
  1. Spent
  2. THAT an interim order of stay of execution of the judgment and decree of this court of 11<sup>th</sup> April 2018 be granted pending the hearing and determination of prayers 3 of this application.
  3. That the applicant be allowed to pay in monthly installments the decretal amount herein
  4. THAT the cost of this application be in the cause
2. The application is supported by the affidavit of the Chairman of the applicant's Board of Directors Mr. Francis Ngone Gathiga and is premised on the grounds that: -
  1. The plaintiff has sent the auctioneers to proclaim and attach the applicant's goods in execution of a decree of this court.



2. The defendant is apprehensive that its office equipments will be taken away and sold by the auctioneers at a throw away price yet the decretal amount will not have been fully settled
  3. The applicants stand to suffer irreparable damage and substantial loss of this honourable court declines a stay of execution as the respondent will proceed to execute against it for the sum of Kshs. 13,837,657.12
  4. The applicants do not intend to appeal against the judgment delivered in this matter and has partially paid an amount of Kshs. 500,000 as a sign of good faith.
  5. The applicants are willing and able to pay the decretal sum of Kshs 13,837,657.12 and only seek to be granted leave to liquidate the same by way of equal monthly installments to be agreed upon by the parties herein until payment in full commencing 31<sup>st</sup> January 2020 and on the last day of every successive month.
  6. This application has been filed without undue delay.
  7. It is in the interest of justice and fairness that this application be allowed and decided expeditiously.
3. The respondent opposed the application through a replying affidavit of its General Manager Mr. Satish Kumar Bhatia who states that the parties herein recorded a consent on 21<sup>st</sup> November 2019 that allowed the respondent to recover the decretal sum before taxation but that the applicant did not, at the time, indicate that it had any difficulties in settling the decretal sum. He avers that the decretal sum continues to accrue interest and that the auctioneer fees is yet to be settled. He opines that in the event that the court considers allowing the defendants application, then it should impose reasonable conditions for stay and proposes that the applicant makes a deposit of Kshs. 5 Million and thereafter monthly installments of Kshs. 1,000,000 until payment in full.
4. Parties canvassed the application by way of written submissions which I have considered alongside the pleadings and the cited authorities. The main issue for determination is whether the applicant is entitled to the orders sought in the application. The applicant seeks orders for stay of execution and to be allowed to defray the decretal sum by way of monthly installments. The applicant invoked Order 21 rule 12 of the Civil Procedure Rules which 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 installments 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 installments 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.”



5. The applicant states that the delay in settling the decretal sum is not deliberate but has been occasioned by financial constraints. The applicant further stated that it had, in the spirit of good faith, deposited Kshs. 500,000 and a further Kshs. 600,00 towards settling the debt. The applicant urged the court to allow it to settle the decretal amount by way of monthly installments of Kshs. 100,000 per month.
6. The respondent, on the other hand, submitted that the applicant had not presented sufficient information to enable the court exercise its discretion in its favour. The respondent observed that while the decretal sum stood at Kshs. 13 Million, the applicant had so far paid Kshs. 600,000 and that the applicant's further payment of Kshs. 600,00 was through a cheque that was dishonoured.
7. In *Hildegard Ndalut vs Lelkina Dairies Ltd & Anor.* (2005) eKLR, the Court held as follows: -

“Both parties have referred to the case of *Keshavji Jethabhai & Brothers Limited –vs- Saleh Abdulla* [1959] EA 260, which is a case from a High Court of Tanganyika. That case followed the principles laid down in the Indian case of *Sawatram Ramprasad –vs- Imperial Bank of India* (1933) AIR Nag. 33 – that a defendant should be required to show his bona fides by arranging fair payment of the proportion of the debt – in persuading the court to allow payment by way of installments. This, in my view, is the proper test to apply in granting orders for payment of a decretal amount by way of instalments. 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”.
8. In *Freight Forwarders Ltd vs Elsek & Elsek (K) Ltd* (2012) eKLR, the court laid down the principles regarding what amounts to ‘sufficient cause’ as follows: -
  - (a) The debtor is unable to pay in lump sum.
  - (b) The debtor can pay by reasonable monthly instalments.
  - (c) The application is made in utmost good faith.
9. In *Diamond Star General Forwarding Ltd vs Ambrose D O Rachier* (2018) eKLR the court held that: -

“That my view is an applicant who wishes a court to exercise its discretion and order payment of a decretal sum by way of installments must be very candid with the court. Such an applicant must present to the court sufficient material to show that he/she is a person of no means, that whatever income she or he has is lawfully committed elsewhere. He or she must disclose to the court all his/her means and explain to the court why the proposed installments are the best option available. Accordingly, the burden is on the applicant to prove/show that he/she deserves the orders sought”.
10. In *Keshral Jetha alias & Brothers Ltd vs Saleh Abdul* (1959) E.A 260 the court stated as follows regarding the exercise of discretion: -

“That is each case must be weighed on its merits and facts. The inability to pay the decretal sum at once may not be considered as a sufficient reason. While its possibly true that hardship to pay may account for the court to consider the application, but the Judgment debtor must demonstrate good faith or bona fide on his conduct to make arrangements for



prompt payment and in a variety of ways such leave to permit the judgment debtor to pay the debt by way of installments should not prejudice the judgment creditor”.

11. From the above cited cases, it is clear that Order 21 Rule 12 of the Civil Procedure Rules grants the Court the discretion to determine whether the decree can be settled in installments where the parties agree or where the applicant shows sufficient cause. In the instant case, I note that the applicant explained that it expected to generate income through the sale of one of its properties but that the sale collapsed as the proposed purchaser was unable to secure funds from its financiers. The applicant therefore seeks for more time to enable it find an alternative means to settle the debt.
12. My finding is that the applicant has had ample time, since December 2019, to settle the debt. It is noteworthy that the applicant has not demonstrated that it has, since the filing of this application, made any moves towards reducing the debt which continues to accrue interest with every passing day. I am not persuaded that the application has been made in utmost good faith more so considering the fact that it was not disputed that one of the cheques that the applicant sent to the respondent towards settling the decretal sum was not honoured. Furthermore, the decretal sum stands at Kshs. 13,837,657 whereas the applicant has to date has paid only Kshs. 600,000 which I find to be way too low to warrant the exercise of this court’s discretion in the applicant’s favour. Needless to say, the applicant has not shown that it has been paying its proposed monthly installments of Kshs. 100,000 during the pendency of this application as a sign of its commitment and good faith.
13. I find that the applicant’s proposal to pay Kshs 100,000 per month, when weighed against the total decretal sum of Kshs, 13.8 Million, will be untenable, oppressive and prejudicial to the respondent who is entitled to enjoy the fruits of its judgment as it would take more than 10 years to realize the amount owed.
14. I however note that the respondent extended an olive branch to the applicant by proposing that it makes a deposits Kshs. 5,000,000 within thirty days from the date of determination of the application and thereafter settles the balance in monthly installments of Kshs. 1,000,000 till payment in full. I find that the respondent’s proposal is reasonable in the circumstances of this case in view of the fact that the applicant has had more than ample time to put its financial ‘house’ in order.
15. In the upshot, and having found that the applicant did not present sufficient cause to warrant the granting the orders sought, I will nonetheless adopt the respondent’s proposal on settlement of the decree and allow the application on the following terms: -
  - a. There shall be stay of execution of the decree herein subject to the following conditions: -
    - i. The applicant shall pay the respondent a deposit of Kshs. 5,000,000 (five million) within thirty days from the time of this ruling.
    - ii. The applicant shall thereafter pay monthly installments of Kshs 1,000,000 on or before the 10<sup>th</sup> day of each succeeding months until payment in full.
  - b. In default of any one payment on its due date execution to issue without further reference to the court
  - c. Costs of the application are awarded to the respondent.



DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17<sup>TH</sup> APRIL 2020.

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Mr. Masinde for Plaintiff/Respondent

Mr. Gakaria for Defendant/Applicant

Court Assistant: Dennis

