



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 317 OF 2014

JACK & JILL SUPERMARKET LIMITED.....PLAINTIFF

-VERSUS-

VIKTAR MAINA NGUNJIRI.....DEFENDANT

RULING

- 1) On 25th October 2018, judgment was entered in favour of the plaintiff and against the defendant in the sum of kshs.21,508,000/= in respect of special and exemplary damages plus interest. The defendant has now taken out the motion dated 19th May 2020 whereof he sought for an order permitting him to liquidate the judgment sum by monthly installments of ksh.500,000/=. The defendant filed an affidavit he swore in support of the application. When served with the motion, the plaintiff filed grounds of oppositions to resist the application.
- 2) Learned counsels appearing in this matter made oral submissions during the interpartes hearing of the motion. I have considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit. I have also considered the grounds of opposition plus the rival submissions.
- 3) The defendant beseeched this court to allow him to settle the decree by monthly installments of ksh.500,000/= until full payment. The defendant averred that he is a commodity trader involved in the business of export and import majorly to and from China. It is stated that the current Covid 19 pandemic has seriously affected his business to the point that he is unable to raise enough funds to settle the decree at once.
- 4) The plaintiff filed grounds of opposition and urged this court to dismiss the motion stating that the court has no jurisdiction to issue the orders since the matter is in respect of insolvency and or debt restructuring. The plaintiff also pointed out that the defendant failed to make full and proper disclosure of his business dealings to substantiate and provide any evidence to support the allegation that the Covid 19 pandemic had affected his business.
- 5) Having considered the material placed before this court plus the rival submissions, it is not in dispute that this country and other countries all over the world are facing a Covid 19 pandemic. It is a matter of common notoriety that flights in and out the country were suspended to control the spread of the corana virus. It is also common knowledge that many businesses shut down during this period.
- 6) The defendant has expressly deponed that he is in the business of exporting and importing commodities majorly to and from China. He has also expressly averred that his business was adversely affected to the extent that he is unable to raise enough money to settle the decree at once. The plaintiff did not controvert the defendant's averments.
- 7) I have no reason to doubt the veracity of those averments. The court is given an unfettered discretion under Order 21 rule 12 to direct payment of the decretal sum by instalments. The applicant is required to provide the court with sufficient reason. I am convinced that the reason advanced by the defendant is plausible and sufficient.
- 8) The defendant has urged this court to allow him to liquidate the judgment sum by monthly instalments of kshs.500,000/=. The judgment sum is ksh.21,508,000/= plus interest. If interest and costs are added to the principal sum, the decretal sum is likely to rise to more than ksh.25,000,000/=. If the defendant's request is granted, then it means it will take more than 60 months to settle the decretal amount.
- 9) In other words, if the defendant's application is acceded, it will take him more than 5 years to settle the debt. That will be oppressive to the plaintiff. I think a reasonable period that the defendant should be given should not exceed 24 months.
- 10) The defendant has not disclosed how much he has been earning from his export and import business per month during the period of the pandemic to enable this court ascertain a reasonable instalment. I think it is only reasonable to raise the monthly instalment so that the debt can be settled within 24 months.
- 11) In the end, the defendant's motion is allowed as follows:

i. The defendant to liquidate the decretal sum by monthly instalment of ksh.1,250,000/= with effect from 10th November, 2020 and on the 10th day of each succeeding month until full payment.

ii. In default of any one instalment, the plaintiff is at liberty to execute.

iii. Each party to meet its own costs of the motion.

Dated, signed and delivered online via Microsoft Teams at Nairobi this 9th day of October, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant