



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE NO. 309 OF 2011

BENARD KIPKEMOI SOY.....PLAINTIFF

-VERSUS-

LABAN CHERONGONY.....DEFENDANT

RULING

1. Judgment in this suit was entered in favour of the plaintiff against the defendant on the 9th February 2017 in the sum of Kshs.3,800,000/= plus costs and interest.

2. The Defendant, pursuant to provisions of Order 21 rule 12(2) Civil Procedure Rule(CPR) and Section 1A, 1B and 3A of the Civil Procedure Act (the Act) seeks to be allowed to liquidate the decretal sum in monthly instalments of Kshs.500,000/= first instalment and thereafter Kshs.200,000/= until payment in full.

The application is opposed by a Replying Affidavit sworn by the Respondent.

3. **Order 21 Rule 12 (2) CPR** provides for payment of decretal sums in instalments and suspension of interest upon the applicant giving sufficient reasons.

The applicant deposes that he is facing cash flow problems and is out of employment. No further explanation was tendered. On the other hand the decreeholder submits that the application is made to delay payments and the delay of two years is unreasonable, and intends to extend the delay by this application.

4. A party holding a valid decree in his hands ought to be paid without unreasonable delay so as to reap the fruits of his judgment.

5. I have considered that the judgment debtor is willing to pay in instalments as stated above, and considered the following cases. **Lavington Security Ltd –vs- Nairobi City Water and Sewerage Co. Ltd(2014) e KLR** and **Freight Forwarders Ltd –vs- Elzek & Elzek (K) Ltd (2012) e KLR** and **Singh Gitau Advocates –vs- City Finance Bank Ltd(2013) e KLR**.

The common thread across the decisions is that courts will allow payment of decretal sums by instalments if the offer is made in good faith and the monthly instalments are reasonable.

6. The decretal sum is Kshs.3,800,000/=. I have considered reasons advanced by the judgment debtor. They are not persuasive. However the Respondent does not object the instalments save to state that a reasonable lumpsum should be ordered, suggesting 50% of the decretal sum.

To be fair to both parties and in exercise of my discretion, I hereby allow the application in the following terms:

(a) The defendant shall pay to the plaintiff a lumpsum of Kshs.800,000/= within the next 45 days i.e on or before the 30th of April 2019.

(b) The balance shall be paid in equal monthly instalments of Kshs.400,000/= starting from the 30th May 2019 and on the 30th of each succeeding month until payment in full.

(c) The court declines to suspend interest on the decretal sum during the payment period.

(d) In default of (a) and (b) above the plaintiff shall be at liberty to execute the decree and/or to apply.

(e) There shall be no orders as to costs.

Dated, signed and delivered this 13th Day of March 2019.

J.N. MULWA

JUDGE