



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**CIVIL CASE NO. 241 OF 2011**

**CABRO EAST AFRICA LIMITED.....PLAINTIFF/RESPONDENT**

**VERSUS**

**ROSOGA INVESTMENTS LIMITED.....DEFENDANT/APPLICANT**

**RULING**

1. Judgment in this case was passed in favour of the plaintiff against the defendant in the sum of Kshs.4,793,064 on the 4<sup>th</sup> May 2017.

The judgment debtor did not liquidate the same.

On the 6<sup>th</sup> June 2018 one year after, the judgment debtor approached the court with an application for leave to liquidate the decretal sum by monthly instalments of Kshs.500,000/= pursuant to provisions of **Order 21 Rule 12 Civil Procedure Rules.(C.P.R)**.

2. By an ex parte court order dated the 26<sup>th</sup> July 2018, the defendant was allowed to pay Kshs.500,000/= on the 5<sup>th</sup> day of every month pending hearing and determination of this application, as a condition for stay of execution.

I have considered the supporting and opposing affidavits to the application as well as the rival parties submissions.

3. Payment of decretal sums is based on the courts discretion upon circumstances of the applicant.

**Order 21 rule 12 CPR** allows the court to order instalment Payments with or without consent of the decree holder.

4. The court has to be satisfied of three conditions to allow payment in instalments;

*1. Whether the applicant has shown sufficient reason as to why it should pay in instalments.*

*2. Whether the application was made in good faith and the monthly instalments are reasonable.*

*3. Whether the applicant has shown bonafides by arranging fair payments in instalments.*

5. The above criteria was set down in the case **Rajabali Alidina -vs- Remtulla Alidina & Another (1961) EA 565** and followed in many others - **Lavington Security Limited -vs- Nairobi City Water & Sewerage Co. Ltd. (2014) e KLR**, **Freight Forwarders Ltd -vs- Elsek & Elsek (K) Ltd (2012) e KLR**, **Sing Gatau Advocates -vs- City Finance Bank Ltd (2013) e KLR**, **Lucia Muthoni Maria -vs- Academic Services Ltd (2016) e KLR** and **Winfred Nyamira Maina -vs- Peterson Onyiego Gichana (2015) e KLR**.

6 The thread running across the above cases, is among others, and cited by both parties that if sufficient and satisfactory explanations as to the judgment debtors inability to pay in lumpsum, its conduct, its willingness to pay, delay taken, and *bonafides* by the applicant, the court may be persuaded to allow reasonable instalment payments.

7. The applicant has not explained the delay in payment of the decretal sum for a year, but as it says it has now arranged payment of Kshs.500,000/= per month. That however does not satisfy the court as to the unexplained delay. I have noted that the ban on timber logging, the mainstream income venture by the applicant was imposed on the 24<sup>th</sup> February 2018 by the government for only for (3) three months – upto end of May 2018. No explanation has been tendered to explain the prior period from the date of judgment. The conduct of the Judgment debtor is not satisfactory – **Alidina and Lavington Security** cases (Supra).

8. Nevertheless, the applicant has offered to pay Kshs.500,000/= per month.

This will no doubt take a long time to clear, 18 months, in addition to the 12 months prior to the offer.

9. Weighing the position by the applicant as against the respondents interests and upon my discretion, I shall allow the applicant/plaintiff to pay the balance of the decretal sum in monthly equal instalments of Kshs.600,000/= with effect from each 15<sup>th</sup> day of each succeeding month until payment in full. In default, the defendant shall be at liberty to execute.

The plaintiff will have costs of the application.

**Dated, signed and delivered this 16<sup>th</sup> Day of May 2019.**

**J.N. MULWA**

**JUDGE**