



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL SUIT NO. 201 OF 2018**

**BEVERLY LIDONDE HOLDINGS LTD.....APPLICANT**

**-VERSUS -**

**SLOK CONSTRUCTION (K) LTD.....1ST RESPONDENT/DEFENDANT**

**CLEAR REAL AUCTIONEERS.....2ND RESPONDENT/DEFENDANT**

**RULING**

1. *Slok Construction Limited* (*Slok*) filed a suit against *Beverly Lidonde Holding Ltd*, being HCCC No. 354 of 2016, on **30th August, 2016**. That case was referred by this court to mediation and the parties, following that mediation reached a settlement. This court on **20th September, 2017** entered judgment in terms of that settlement. A decree was drawn in the following terms:

**“REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & TAX DIVISION**

**MEDIATION NO. 131 OF 2016**

**ARISING FROM CIVIL CASE NO. 354 OF 2016**

**SLOK CONSTRUCTION LIMITED.....PLAINTIFF**

**VERSUS**

**BEVERLY LIDONDE HOLDINGS LIMITED.....DEFENDANT**

**IN CHAMBERS ON 20TH SEPTEMBER, 2017 BEFORE**

**THE HONOURABLE MR JUSTICE FRED A. OCHIENG**

**DECREE**

***This matter*** coming up on 20th September, 2017 before the Honourable Mr Justice Fred A Ochieng. **AND UPON READING** the mediation settlement agreement dated 25th August, 2017 signed by **DIRECTOR** of **SLOK CONSTRUCTION LIMITED** in presence of Charles O. Ojuok on behalf of **ARCHER & WILCOCK ADVOCATES** counsel for the plaintiff and JACK O. ORONGA on behalf of **BEVERLY LIDONDE HOLDINGS LIMITED** counsel for the defendant and in the presence of **JOHN MAGERERE** the mediator.

**IT IS HEREBY ORDERED BY CONSENT:**

1. That Beverly Lidonde Holdings Limited (BLHL) will pay to Slok Construction Limited the total of **kenya Shillings Eighty One Million (Kshs 81,000,000)(the decretal amount)**

2. That the sum of **kenya shillings Eighty One Million (Kshs 81,000,000)** will be paid in 48 equal monthly instalments of **Kenya shillings one million six hundred eighty seven thousand five hundred (Ksh 1,687,500/-)** per month.
3. That the first instalment of **Kenya shillings one million six hundred eighty seven thousand five hundred (Ksh 1,687,500/-)** shall be paid on or before the 30th September, 2017 and the subsequent installments shall be paid on or before the 30th of each of the subsequent month until payment in full. All payment will be made by way of RTGS to SCL bank account as notified in writing by SCL.
4. That in the event BLHL fails to pay any of the installment on its due date, SCL shall issue a 30 day curative notice to BLHL to pay the installment in question. If upon the lapse of the 30 days the installment still remains unpaid, the installment shall attract interest at the rate of 14% per annum from the due date until payment. Provided the said percentage applies only to the installment in question.
5. That as additional security, the Director (Alice Mudiri) of BLHL will issue at the cost (including stamp duty) of BLHL a personal guarantee (in the form approved by both SCL and BLHL), in favour of SCL to secure the sum of Kenya Shillings Eighty One Million (81,000,000/-) and interest (if any) and ensure compliance with this agreement, within 30 days of signing of this agreement, the failure of this the decretal amount or the balance outstanding thereof plus interest, shall become immediately due and payable.

6. That each party to bear its own costs and Advocates fees.

**Given under my hand and seal of the court at Nairobi this 20th day of September, 2017.**

**Issued at Nairobi this 5th day of March 2017**

Deputy Registrar

High Court of Kenya, Nairobi

Milimani Commercial & Tax Division” ..

2. **Beverly** failed to honour the repayment schedule and **Slok** applied and obtained warrants of attachment of the movable goods of **Beverly**. This is in **HCC No. 354 of 2016**.
3. On the auctioneers proceedings to attach **Beverly's** movable goods, in what can only be termed as an abuse of the court process, **Beverly** filed this new suit that is **HCC No. 201 of 2018**. In this new suit, **Beverly** alleged that **Clear Auctioneers** had proceeded to the school known as **Beverly Lidonde Holding Ltd** and had attached goods without justification. **Beverly** by this suit sought injunctive orders to restrain **Slok** from attaching its goods.
4. Parties cannot be allowed to abuse the court process as **Beverly** has done in this case by filing this new suit. **Beverly** should have litigated whatever grievances it had in **HCCC No. 354 of 2016**.
5. It is for the above reason that I decline to entertain the allegations made that **Slok** had performed the construction work poorly, or that the amount which is the subject of the attachment is colossal. That indeed, is water under the bridge, since the attachment is in respect of the consent Judgment in **HCC No. 354 of 2016**. That consent is evidenced by the decree reproduced above.
6. For the above reasons the orders of the court are:

a. *The Notice of Motion dated 24th May, 2018 is hereby dismissed with costs to the defendant.*

b. *This suit is hereby struck out with costs for being an abuse of the court process in view of the existence of HCCC No. 354 of 2016.*

**DATED, SIGNED and DELIVERED at NAIROBI this 17th day of July 2018.**

**MARY KASANGO**

**JUDGE**

**Ruling read in open court in the presence of**

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant