

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 17 OF 2018

WEST KENYA SUGAR COMPANY LIMITED.....APPELLANT

VERSUS

FANUEL EKUOMO ASHIEMBE.....RESPONDENT

AND

CIVIL APPEAL NO 19 OF 2018

WEST KENYA SUGAR COMPANY LIMITED.....APPELLANT

VERSUS

FANUEL EKUOMO ASHIEMBE.....RESPONDENT

(Appeals arising from the judgments and decrees of the Hon. ML Shimenga, Senior Resident Magistrate, in Butere SRMCCC No. 59 of 2018 of 28th September 2017)

RULING

1. In the appeals herein are Motions dated 21st May 2018, seeking dismissal of the appeals for being an abuse of court process. Both applications came up for hearing on 16th July 2018. Counsel argued in HCCA No. 17 of 2018 on the understanding that the order made therein shall apply to HCCA No. 9 of 2018.
2. The applications are brought at the behest of the respondents. Their case is that the appellant herein moved the trial court and obtained an order to pay the decretal sum in instalments, while at the same time he moved this court and obtained leave to file appeal against the same decree of the trial court. He avers that the courts are thereby being taken round in circles and argues that that amounts to abuse of the process. It is submitted that the appeals are incompetent and bad in law.
3. On the other hand, the appellant argues that there is no abuse of court process
4. During the oral argument of the applications, counsel for the parties did not cite any statutory provisions or case law. The applications raise pure points of law, whether a party who is aggrieved by a decree or order of the trial court and intends to appeal against the same, can at the same time ask the trial court to allow him to liquidate the decretal sum in instalments. Put in another way, they pose the question whether obtaining an order from a trial court to settle a judgment amount in instalments compromises an intended or pending appeal. I would have expected that the parties, especially the respondents, would point me to the law, if any, which supports the proposition made in their Motions.
5. I am not aware of any bar to an intended appellant, and indeed an appellant who has a pending appeal, seeking or obtaining orders from the trial court to allow him to liquidate a judgement sum in instalments. I do not see how seeking or obtaining of such orders extinguishes the appellant's right to challenge the same judgment or decree on appeal.
6. I need not say more. The Motions before me are misconceived and not merited. Their fate lies with dismissal, and I do hereby dismiss the same with costs to the respondents.

DATED, SIGNED and DELIVERED at KAKAMEGA this 3RD DAY OF DECEMBER, 2018

W. MUSYOKA

JUDGE