



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 576 of 2007

RUTH WANGECHI GICHUHI. DECREE HOLDER/RESPONDENT

VERSUS

ANDREW MANGENI LUADE. APPLICANT/JUDGMENTDEBTOR

R U L I N G

The application before the court is the Notice of Motion dated 30th August, 2012. It seeks that the applicant who is the Judgment Debtor in this suit, be allowed to settle the decretal sum by monthly instalments of Kshs.300,000/-. She also seeks in the meantime, an interim stay of execution until this application is decided.

The application was first placed before Kimondo J, who granted the interim stay on condition that the applicant pays Ksh.1,000,000/- into a joint, interest-earning account of counsel of both parties, pending the hearing inter-partes of the application. The hearing was done on 23rd November, 2012 and this is the ruling arising therefrom.

The following facts need to be noted before this court makes a decision.

- a) That the decretal sum due is just about Ksh.7,300,000/- of which Ksh.1,000,000/- has been paid to the decree holder.
- b) That the applicant as the Judgment Debtor had offered to settle the decretal sum balance by monthly instalments of ksh.300,000/- but has not, since the court granted interim stay, deposited any such instalment in court to show and confirm goodwill and bona fides on his part.
- c) That although a Notice of Appeal to the Court of Appeal was filed on 21st July, 2011, there is no evidence that any substantive appeal was actually filed within the six months prescribed nor is there evidence of extension of the time to appear.
- d) That the delay to settle the full decretal sum and the attempt to seek to settle by instalments of Ksh.300,000/- appears to be generated by the Applicant's Insurer, the Real Insurance Company Ltd, and not the Applicant, whose apparent interest in the delay is therefore to merely soften ground for the insurer.

e) The applicant in her supporting affidavit concedes that she was fully insured and that the problem is that the insurer has delayed to settle the claim and that is what gives her the reason to seek to settle by the suggested instalment.

I have carefully considered this application. I am persuaded that the Applicant has no sufficient or good grounds for the delay to settle the decretal sum. Her insurers can afford to pay the full amount at once, if called upon by her to do so. If need be, the applicant has the insurance law on her side to enable him recover the money from the Insurer, if she has not done so already. The decretal sum arises from injuries sustained in a road motor accident way back in the year 2007. Any further delay is clearly injurious or prejudicial to the decree-holder and the Judgment-debtor should not be allowed to shield himself away using the technicalities of the law.

In the circumstances, the best this court can do to the applicant is to allow this application only on the following terms: - That the Applicant settles the decretal sum by monthly instalments of Ksh.1,000,000/- with effect from 1st of March, 2013. That is to say that the Applicant shall immediately pay to the Decree-holder Kshs.2,000,000/- to cover the months of March and April 2013 and thereafter pay ksh.1,000,000/- with effect from 1st May, 2013 until full settlement. In default of any of the above instalments, the Decree holder will be entitled to execute the decree for the balance still outstanding. Orders accordingly. Costs of this application will be borne by the Applicant.

Dated and delivered at Nairobi this 11th day of April 2013.

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D A ONYANCHA
JUDGE