



**Mukesh v Associated Construcion Co. (K) Ltd (Cause  
265 of 2020) [2024] KEELRC 1898 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1898 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 265 OF 2020  
AN MWAURE, J  
JULY 24, 2024**

**BETWEEN**  
**KALYANI PANDIAN MOHAN MUKESH ..... PETITIONER**  
**AND**  
**ASSOCIATED CONSTRUCITON CO. (K) LTD ..... RESPONDENT**

**RULING**

1. The applicant herein as per his notice of motion dated 28<sup>th</sup> February 2024 seeks the following prayers:
  - a. That this application be certified urgent, service thereof be dispensed with and the same be heard *ex parte* in the first instance.
  - b. That pending the inter partes hearing of this application the court be pleased to issue temporary orders for stay of execution of the judgment/decreed made on 6/10/2022.
  - c. That this honourable court be pleased to grant leave to M/s Kiarie Joshua & Co advocates to come on record in this matter for the respondent in place of the firm of K.M. Mburu & Associates Advocates.
  - d. That this honourable court be pleased to grant leave to the respondent herein to liquidate the decretal sums balance by monthly instalments of kshs 100,000 payable on the 28<sup>th</sup> day of every month until payment in full.
  - e. That the costs of this application be in the cause.
2. The applicant states that they are willing to settle the decretal sum and have indeed already paid kshs 500,000/- but are unable to pay the balance of kshs, 2, 277,845/40 due to financial constraints as there are delays of their payments by the government.



3. The applicant says they wrote to the respondent by their letter dated 13<sup>th</sup> February 2024 but the claimants rejected the offer and threatened to execute.
4. The applicant is therefore praying the court to grant them opportunity to settle the decretal sums in instalments.
5. The applicant says the claimant is in the process of obtaining the warrants of attachment and will proceed for execution. Hence the applicant seeks the prayers as per his application.
6. The claimant in his replying affidavit dated 9<sup>th</sup> April 2024 says the application is made in bad faith. He says that the genesis of this suit commenced in December 2019 and Judgment was entered in their favour dated 6<sup>th</sup> October 2022 for Kshs 2,258,333/- plus costs and interest.
7. He says despite repeated proposals to settle the decretal sum the same are not acceptable to the claimant as they are not reasonable. The claimant says the applicant made some post dated cheques but all were returned as they were not honoured. On 31<sup>st</sup> May 2023 the respondent paid kshs 400,000/- but has never made any other payments since then.
8. The claimant says he will suffer a lot of loss if the applicant is allowed to settle the decretal sum by instalments of kshs 100,000 per month.

### **Analysis**

9. The decretal sum due to the claimant as per decree dated 9<sup>th</sup> December 2022 is kshs 2,258,333/- plus taxed costs of kshs 233,440/55 and 62,706/53 as per the Deputy Registrar's ruling dated 27<sup>th</sup> September 2023.
10. The respondents have decried financial challenges due to such debt owed to the applicant by the government. There is no tangible evidence of even such debt owed to the applicant by the Government. Further this is a debt that has been pending for over one year and the only payment so far made is kshs 400,000/-.
11. The applicant could have reduced the decretal sum as a sign of goodwill. There does not seem to be good will on their part. To allow them to pay Kshs 100,000/- per month for a decretal sum of over kshs 2,200,000 will be unreasonable and will take for ever to clear the same.
12. The Court therefore in its discretion finds no reasonable ground to stay the execution of its judgement made on 6<sup>th</sup> October 2022.
13. The compromise to this is to give the applicant an opportunity to settle the decretal sum in 6 monthly instalment starting from 1<sup>st</sup> September 2024 and failure to pay one monthly instalment the claimant has liberty to proceed with execution without any further ado.
14. Costs to be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 24TH DAY OF JULY, 2024.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**



In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

