

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

MOMBASA

CAUSE NUMBER 816 OF 2016

STEPHEN KENGA BAYA..... CLAIMANT

VERSUS

KWALE INTERNATINAL SUGAR

COMPANY LTD..... RESPONDENT

RULING

1. By a Notice of Motion of Application dated 15th April 2025, the Respondent/ Judgment Debtor seeks that this Court be pleased to allow them to settle the decretal sum, costs and interest in twelve [12] equal monthly instalments.
2. The Respondent states that a decree exists herein against them, and the Claimant/Decree Holder has intimated that he would be commencing execution proceedings against them for a sum of KShs. 774,641.

3. That upon receiving the notification that the Decree Holder intends to initiate execution of the decree against them, they, through their counsel, made a proposal to the Decree Holder to be permitted to liquidate the decretal sum, including party and party costs; however, the proposal did not receive any response.
4. They further state that they are facing significant financial difficulties since their operations have halted due to security concerns, arson attacks, and economic sabotage, and as a result, they are not in a position to liquidate the decretal sum all at once.
5. They argue that the proposal to pay the sum in twelve instalments is reasonable. If this Court does not grant the orders sought, the entity will suffer irreparable loss and damage. Its reputation shall also be prejudiced if its assets are attached and seized.
6. The Decree Holder opposes the application, urging this Court to consider that judgment in this matter was entered in

favour of the Decree Holder quite some time ago, on 28th April 2022. Furthermore, the Respondent exercised his right of appeal to the Court of Appeal and ultimately had this Court's judgment partially overturned, on 12th July 2024.

7. Following the Court of Appeal's judgment, party and party costs related to the appeal were assessed on 26th September 2024. After the taxation, the Respondent's Counsel wrote to the Claimant's Counsel, proposing to settle the total amount owed to the latter in twelve monthly instalments. Through his letter dated 7th April 2025, the Claimant's Counsel responded to the Respondent's Counsel, stating that the proposal was unreasonable and therefore not acceptable.
8. The Respondent currently spends KShs. 1,000,000 per month for the maintenance of its trucks and machinery, and the purchase of diesel to run them. It is not correct, therefore, for the Respondent to assert that it is unable to settle the decretal amount at once.

9. The Respondent has not produced court bank statements and books of account from which it can be discerned that it is suffering from a financial downturn and, as such, is not able to settle the sum at once.
10. In my view, once a court issues a decree in favour of a party, the legitimate expectation is that the successful party should be allowed to realize the fruits of that decree without hindrance, unless the decree has been lawfully stayed or set aside for reasons recognised by law.
11. The Judgment Debtor should only be allowed to settle the decretal sum by instalments where sufficient and credible grounds have been established. Mere bald assertions of financial incapacity to settle the sum at once are not, in themselves, adequate justification for such relief.
12. Permitting an application for payment instalments constitutes a discretionary order, granted based on the specific circumstances of each case and not influenced by compassion, caprice, or whimsical considerations. Factors

such as the duration for which the matter has remained within the judicial process and the expected continuation in the judicial system if the instalment payment request is allowed are crucial considerations before issuing such an order. This Court hasn't lost sight of the fact that the dispute herein has been in the Court system for a period of approximately ten years now.

13. The Respondent did not provide this Court with sufficient evidence to suggest that their financial situation genuinely prevents them from paying the full decretal sum at once. Additionally, considering the duration this matter has been before the Court, the justice of this case and public policy do not support granting the order sought by the Respondent.

14. In the upshot, I find the application lacking in merit; it is hereby dismissed with costs.

Read Signed and Delivered this 12th Day of March 2026.

OCHARO KEBIRA

JUDGE

ORIGINAL