

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 120 OF 2016

SUGARLAND ESTATES LTD.....PLAINTIFF

VERSUS

UCHUMI SUPERMARKET LTD.....DEFENDANT

RULING

The applicant prays that he be allowed to liquidate the development sum of Kshs.8,888,631.00 and costs of the suit upon taxation by way of payment of monthly instalments of Kshs.500,000 until payment in full. The applicant claims that he is incapable of immediately paying to the plaintiff the full decretal sum of Kshs.8,888,631.00 plus costs due to dire financial crisis and liquidity challenges it is currently facing which is of public knowledge.

The applicant seeks to be allowed to liquidate the decretal sum through payment of monthly instalment amounting to Kshs.500,000. It is claimed that the applicant is in the process of implementing a revival plan that will turn around its fortunes.

Mr. Yego filed in replying affidavit stating in essence that the plaintiff and defendant had already agreed and settled the matter and a consent was drawn and approved by the defendant through Mr. Henry Kirwa Bett, the Finance Officer who was representing the Chief Executive Officer in the negotiations. Sadly, all that effort and agreement is being put to waste by the deponent Carol Gaki Mungania who has exposed the defendant to execution through her capricious attitude of approbating and reprobating.

That annexure ZK2 is not draft consent but a final consent agreed upon by the parties following intense negotiations. In fact, the defendant is in possession of a signed copy of the consent which it has deliberately avoided to annex to the application or furnish them with a copy. The defendant's application is therefore made in bad faith. That the value of the improvements, additions, alterations, equipment and fixtures claimed in prayer (d) of the plaint was given by the defendant as Kshs.73,129,039.05 hence the party and party costs agreed upon is modest. See annexure ZK3. That the defendant's application is therefore made in bad faith and lacks merits as the issues raised had already been agree upon. The defendant cannot have their cake and eat it.

I have considered the application and do find that the interest of both Decree holder and Judgment Creditor should be considered and the interest of the public who have SUBSCRIBED TO the shares at Uchumi Supermarket. I do order that the judgment debtor to be and is hereby allowed to satisfy the decretal amount in monthly instalment of Kshs.700,000/= as from the beginning of 1ST April, 2017. For avoidance of doubt the 1st instalment to be paid on 1st of April 2017. In default of any instalment execution to issue. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF MARCH, 2017.

A.OMBWAYO

JUDGE