



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC MISC. APPL. CASE NO. 21 OF 2015

GENERAL EQUIPMENT (1978) CO. LTD APPLICANT

VERSUS

KASSMAN'S AUTO SERVICE LIMITED RESPONDENT

RULING

1. **General Equipment** [1978] Co. Ltd, the Applicant, seeks to be allowed to pay the decretal amount arising out of the judgment of Business Premises Rent Tribunal case No.13 of 2012 of 9th September 2016 in 36 monthly installments of Ksh.232,750/= with effect from 30th October 2016. The application is based on seven (7) grounds on the notice of motion dated 18th October 2016 and supported by the affidavit of Pankaj Shah, a director of the applicant, sworn on the 18th October 2016.

2. The application is opposed by **Kassam's Auto Garage Services Limited**, the Respondent, through the replying affidavit of Moez Ismael Jamal, a director of the Respondent, sworn on the 28th October 2016.

3. The counsel for the parties appeared before the court on the 25th October 2016 when a consent granting prayers 2 of the notice of motion, which is for stay of execution of the Tribunal judgment of 9th September 2016 pending interpartes hearing and determination was entered. The counsel for the Applicant then filed written submissions dated 17th February 2017. The counsel for the Respondent filed their written submissions dated 5th June 2017.

4. The following are the issues for the court's determination:

- a) Whether the jurisdiction of this court has been properly invoked.
- b) Whether the applicant has made a reasonable cause for payment of the decretal sum in monthly installments, and if so what is a fair amount of monthly installment
- c) Who pays the costs.

5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence by both parties, submissions by counsel and come to the following conclusions:

- a) That the Applicant moved this court through the notice of motion brought under **Section 1A, 1B and 3A of Civil Procedure Act, 22 Order Rule 22, Order 21 Rule 12 (1)(2) of Civil Procedure Rules** filed as a Miscellaneous Application. The notice of motion carries four prayers marked 1 to 4. That prayers 1 and 2 are about certifying the application as urgent and stay order respectively. The two prayers are now spent.

The outstanding prayers are 3 and 4 which are about installments payment of the decretal sum and costs respectively.

b) That the decretal sum that the applicant seeks to be allowed to pay in monthly installments arose from the Business Premises Rent Tribunal in case No.13 of 2012 delivered on 9th September 2016. That the provisions of **Order 21 Rule 12 (1) and (2) of Civil Procedure Rules** are relevant in applications before the courts in which the decretal order was made. While **Order 22 Rule 22 of Civil Procedure Rules** is relevant in application to a court where a decree has been sent for execution.

c) That the court has taken note of the Respondent's offer to accept monthly installments of Ksh.500,000/= towards payment of the decretal sum. The court is obligated under **Section 1A and 1B of the Civil Procedure Act and Article 159 (2) of the**

Constitution to facilitate the just, expeditious proportionate and affordable resolution of the civil disputes before it timeously, and without undue regard to technicalities. That with the foregoing considerations the court finds that the offer made by the Respondent for monthly installment is a reasonable figure that would enable the Applicant meet their obligations under the Tribunal's judgment with less hardship.

6. That for the reasons set out above the notice of motion dated 18th October 2016 is hereby allowed in the following terms.

a) That the applicant do pay the decretal sum arising out of the Business Tribunal Rent Tribunal judgment in case No.13 of 2012 in monthly installments of Ksh.500,000/= starting from 30th October 2016 till payment in full.

b) That the Applicant is granted 90 (ninety) days from today to

pay any arrears of the monthly installments that may be outstanding and in default execution to issue.

c) That each party do bear their own costs in this application.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 8TH DAY OF NOVEMBER 2017

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr. Oteino Njoga for Plaintiff/Applicant

Mr Anule for Janal for Defendant/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

8/11/2017

8/11/2017

S.M. Kibunja Judge

Oyugi court assistant

Mr. Anule for Jamal for the Respondent

Mr. Otieno Njoga for the Applicant

Court: The ruling dated and delivered in open court in presence of Mr. Otieno and Anule for the applicant and Respondent respectively.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

8/11/2017