



REPUBLIC OF KENYA



KENYA LAW
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**Miano v Kenya Institute of Management (Cause E172 of 2023)
[2025] KEELRC 942 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 942 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E172 OF 2023
CN BAARI, J
MARCH 27, 2025**

BETWEEN

ANNE WANJIRU MIANO CLAIMANT

AND

THE KENYA INSTITUTE OF MANAGEMENT RESPONDENT

RULING

1. The Respondent/Applicant's motion before court is dated 6th February, 2025 and filed in court on even date. The Applicant seeks that the Court allows it to defray the decretal sum in instalments of Kshs. 60,000/- per month from February, 2025, and thereafter on the last day of each subsequent month until payment in full.
2. The motion is supported by grounds on the face and the affidavit of Raymond Mwangi sworn on 6th February, 2025 and a subsequent further affidavit sworn on 25th February, 2025. The crux of the motion is that the Applicant owes the Claimant/Respondent a sum of Kshs.1,313,300 being the judgment sum entered in this matter including costs, and that the Applicant is a learning institution that is facing financial challenges brought about by an up surge of cases filed against it by creditors following the COVID.19 pandemic.
3. The Applicant avers that out of the decretal sum above stated, Kshs. 130,000 was paid before costs were taxed and that costs were taxed at Kshs. 208,399.67/-.
4. It states further that the Claimant/Respondent has instructed auctioneers who proceeded to proclaim the Applicant's goods, and that it has similar arrangements with third parties, hence its inability to pay the decretal sum in a lump sum.
5. The Claimant/Respondent opposed the motion vide a replying affidavit sworn by Anne Wanjiru Miano, the Claimant herein, on 20th February, 2025. The Claimant argues that the motion is overtaken



- by events, made in bad faith, and that the Applicant has never appealed against the judgment in the matter.
6. She further states that the Applicant is not capable of approaching this court for stay orders, as there is nothing to stay as no appeal is pending in any court on the matter.
 7. The Claimant/Respondent further states that the Applicant proposed to settle the decretal sum in three monthly instalments, and which proposal was accepted by the Claimant and that the Applicant proceeded to issue cheques staggered through the three months in settlement of the decretal sum. She argues that the first cheques of Kshs. 400,000 was banked and has since cleared.
 8. The Claimant states that the cheques issued were a result of negotiations between the parties and that this motion is a sign of bad faith on the part of the Applicant.
 9. The motion was urged oral before court on 25th March, 2025. Ms. Githii appearing for the Applicant, argued that the Applicant fell into hard times during the Covid.19 pandemic as schools were ordered closed and that upon reopening, it was bombarded with a plethora of cases by various creditors.
 10. It is her argument that the only way the Applicant managed to stay afloat is through entering into consents with creditors for instalment payments and others by way of court orders. She argues further, that the Applicant has since paid the Claimant a total of Kshs. 500,000/- which is a show of good faith and has every intention to obey court orders.
 11. Ms. Githii further argues that the balance of the decretal sum is Kshs. 991,699.67 which the Applicant now seek to defray in installments so that it does not default in any of its other obligations.
 12. Mr. Mutua in opposition, argued that the issue of payment in installments had already been dealt with by the trial judge who found the dispute unnecessary. It is his further case that the Claimant earlier accepted installment payments, but that the Applicant paid a few installments and then stopped paying.
 13. It is his position that it has been three years since the Claimant separated with the Applicant, and has to date not been paid her terminal dues. He states further, that the Applicant issued cheques before it was proclaimed and the last of the cheques was to be presented in April, 2025, hence proceeding to file for stay was a sign of bad faith. He argues that the proposal to pay the decretal sum in monthly installments of Kshs. 60,000, is equally a sign of bad faith and disrespect for the Claimant.
 14. The Claimant's counsel finally argues that the Applicant has not proved by way of bank statements that it is truly facing financial constraints.

Determination

15. I have considered the Applicant's motion together with the grounds in support, the further affidavit, the replying affidavit in opposition, and the parties oral submissions. The issue for determination is whether the Applicant/Respondent should be allowed to pay the decretal sum in monthly installments of Kshs. 60,000/-.
16. Order 21 Rule 12 of the Civil Procedure Rules provides for settlement of a decree by way of instalments in the following words:-

“Where and is so far as a decree is for payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by installments.....”



After passing of any of such decree, the court may on the Application of the Judgment Debtor and with the consent of the Decree- Holder or without the consent of the Decree Holder for sufficient cause shown, Order that the payment of the amount decreed to be postponed or be made by installments on such terms as to the payment of interest, the attachment of the property of the Judgment Debtor or the taking of security from him, or otherwise as it thinks fit?”

17. An order to settle a decretal sum in instalments, is a discretionary power of the Court and which must be exercised judiciously. In *Rajabali Alidina vs Remtulla Alidina & Another* [1961] EA 565 quoted in *Nicholas Gitonga Murongi vs Susan Wairimu & 4 Others* [2021] eKLR the court held that the considerations to be made in an application seeking to settle the decretal sum via installments are: -
 - i) The circumstances under which the debt was contracted.
 - ii) The conduct of the debtor
 - iii) His financial position, and
 - iv) His bona-fides in offering to pay a fair proportion of the debt at once.
18. Parties in this matter separated by mutual consent. The Applicant/Respondent computed the Claimant’s terminal dues and the Claimant was in agreement with the computation, and further consented to being paid her dues in installments way back in 2021.
19. It is further not disputed that the Respondent/Applicant paid the installments as was agreed, but stopped the payment before completion necessitating the filing of the suit herein, and whose decree remains unsatisfied, and is the subject of this motion.
20. The issue for this court is whether the Applicant is entitled to the order sought.
21. It is clear to this court that the Respondent/Applicant computed and even started paying the Claimant her terminal dues in installments. It is also clear, that after judgment was entered, a second agreement was reached to defray the decretal sum in four monthly installments, complete with issuance of postdated cheques in this respect.
22. The Respondent/Applicant has not denied issuing cheque Nos.078413, 078414, 078415 and 078417 all amounting to Kshs. 1,289,778/- in settlement of the decretal sum.
23. Taking into account the circumstances under which the debt in issue accrued, the Respondent/Applicant’s conductor especially its refusal to continue remitting the Claimant’s dues and forcing her to institute suit when it was well aware that it owed her on account of terminal dues, coupled with the Applicant’s current financial position, I find the motion devoid of merit, and order that the Respondent/Applicant proceeds to satisfy the decretal sum in accordance with the agreement it had with the Claimant to do so in four monthly instalments.
24. The Claimant/Respondent to proceed and present the cheques earlier drawn in their favour for payment on the dates indicated on the said cheques.
25. That in default of any one instalment, the Claimant shall be at liberty to execute.
26. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 27TH DAY OF MARCH, 2025.



C. N. BAARI

JUDGE

Appearance:

Mr. Mutua present for the Claimant/Respondent

Ms. Githii Present for the Respondent/Applicant

Ms. Esther S-C/A

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