



REPUBLIC OF KENYA



KENYA LAW
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Vijay Krishnan' V Menon (Vijay Krishna' Vazhvelil) v Windsor Golf Hotel and Country Club (Cause E041 of 2023) [2025] KEELRC 852 (KLR) (14 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 852 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E041 OF 2023
SC RUTTO, J
MARCH 14, 2025

BETWEEN
VIJAY KRISHNAN' V MENON (VIJAY KRISHNA' VAZHVELIL) CLAIMANT
AND
WINDSOR GOLF HOTEL AND COUNTRY CLUB JUDGMENT DEBTOR

RULING

1. Through a Notice of Motion dated 1st March 2025, the Judgment Debtor/Applicant moved this Court seeking the following orders:
 1. Spent.
 2. Spent.
 3. That the Judgment Debtor/Applicant be allowed to settle the outstanding decretal amount in monthly installments of USD 10,000.00 and execution proceedings not to issue as long as payments are made on or before the end of each month.
 4. That the costs of this Application be in the Cause.
2. The Motion is premised on the grounds set out on its face and the Supporting Affidavit sworn on 1st March 2025 by Timothy Kagambi who has described himself as the Applicant's General Manager. Mr. Kagambi avers that owing to the economic challenges facing the hospitality industry and the Applicant specifically, it seeks to settle the decretal amount in monthly instalments of USD 10,000.00 and has therefore come with a proposal in this regard to the Decree Holder.
3. That the Applicant has subsequently made a payment of up to USD 20,000.00 in partial settlement of the decree.



4. Mr. Kagambi further deposes that the Application is made in good faith and the Applicant has come to court with clean hands.
5. The Application is strongly opposed through the Decree Holder's Replying Affidavit sworn on 4th March 2025. The Decree Holder deposes that the decretal amount involved herein comprises his terminal dues that were to be settled three (3) years ago pursuant to a Contract that the Applicant made upon terminating his employment.
6. The Decree Holder has further averred that the Applicant failed to settle the said terminal dues and undertook to settle the same in monthly instalments which it also failed to honor despite numerous demands hence the current suit. That having failed to honour the previous agreements, the Applicant cannot be trusted to settle the amounts that it has failed to settle for a period of three (3) years. In the Decree Holder's view, it is clear that the Applicant is not and has never been keen on settling the amounts owed herein.
7. The Decree Holder has further stated that the sum of USD 20,000.00 that was paid into his Advocate's account on 28th February 2025, was only paid after the Applicant came to the realization that he had filed a Garnishee Application dated 18th February, 2025.
8. That upon filing the garnishee application, the Applicant forwarded to his Advocates a proposal for settlement of the decretal amount in monthly instalments of USD 10,000.00. His Advocates acting under his instructions, responded to the said proposal clearly stating that he was not agreeable to having the decretal sum settled in instalments.
9. The Decree Holder avers that he is vehemently opposed to the settlement of the decretal sum in instalments noting the number of years it has taken and the hustle and struggle he has been through seeking to obtain a court order for settlement of his terminal dues.
10. The Decree Holder has further averred that the Applicant's averment that the decretal amount is forthcoming is a fabrication of lies and empty promises meant to lure the Court into allowing their draconian prayer of settling the decretal amount in miniature instalments of USD 10,000.00 a month. It is the Decree Holder's contention that this will further delay the enjoyment of the fruits of his judgment.
11. It is worth pointing out that vide a Motion Application dated 18th February 2025, the Decree Holder commenced garnishee proceedings to recover the decretal amount which was indicated to be in the sum of USD 79,896.20. On 5th March 2025, the Court issued a garnishee order nisi to the extent of USD 20,000.00 held by the Garnishee in favour of the Applicant.
12. When the instant Application came up for hearing on 12th March 2025, the Court made absolute, the garnishee order nisi issued on 5th March 2025, thereby ordering that the sum of USD 20,000.00 held by the Garnishee in the name of the Applicant be released to the Decree Holder.

Submissions

13. The Application was canvassed by way of oral submissions and thereafter, the Decree Holder elected to file skeleton submissions. Submitting in support of the Application, Mr. Ngatia, Counsel on record for the Applicant posited that the Applicant was willing to settle the decretal amount in full and to this end, implored the Court to allow the Applicant to pay the balance of the decretal amount in monthly instalments of USD 10,000.00 until payment in full. It was Mr. Ngatia's further submission that the decretal amount would be settled in full and there would be no default on the part of the Applicant.



14. Ms. Obiri, appearing together with Ms. Ochola for the Decree Holder, urged the Court against allowing the Applicant's application to settle the decretal amount in instalments. According to Ms. Obiri and Ms. Ochola, the Decree Holder's position was reinforced by the Applicant's past conduct of reneging on past agreements. On this score, Counsels for the Decree Holder referred to the agreement dated 18th February 2021 in which the Applicant and the Decree Holder had agreed to settle his dues upon termination. It was further submitted on behalf of the Decree Holder that the decretal amount constitutes the Decree Holder's terminal dues which have been outstanding for long despite several reminders to the Applicant to settle the same.
15. In the skeleton submissions, the Advocates on record for the Decree Holder submitted that it has been over three (3) years since the Applicant became indebted to the tune of USD 62,418.90 and has not made any effort to settle the said amounts until the Decree Holder filed garnishee proceedings. In Counsel's view, this shows that the Applicant cannot be trusted to honour the instalments due if given an opportunity to pay in instalments.
16. Referencing the case of *Kashval Jethabhai & Brothers Ltd v Saleh Abdul (1959) EA 260*, it was submitted by the Decree Holder's Counsel that the orders have not been sought majorly because the Applicant is unable to settle the instalments as this position has not been sufficiently demonstrated.

Analysis and Determination

17. Having perused the Application herein, the Replying Affidavit by the Decree Holder and bearing in mind the rival submissions, it is evident that the singular issue arising for determination is whether this Court should allow the Applicant to settle the decretal amount in instalments.
18. The relevant law in determining this issue is Order 21 Rule 12 (2) of the Civil Procedure Rules, which provides as follows:
 - “(2) After passing of any 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 by postponed or be made by instalments, on such terms as into 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.” [Underlined for emphasis]
19. Fundamentally, the power to order payment by instalments of the decretal amount is purely a matter of discretion by the Court except that the applicant must demonstrate sufficient cause as to why the Court should exercise such discretion. As it is, the onus of establishing sufficient cause rests on the applicant.
20. In the case of *Keshvaji Jethabhai & Bros Limited v Saleh Abdulla [1959] EA 260* the Court laid down the principles that should guide exercise of discretion in such an application, thus: -
 - a. whilst creditors' rights must be considered, each case must be considered on its own merits and discretion exercised accordingly.
 - b. the mere inability of a debtor to pay in full at once is not a sufficient reason for exercise of the discretion.
 - c. the debtor should be required to show his bona fides by arranging prompt payment of a fair proportion.



- d. hardship of the debtor might be a factor, but it is a question in each case whether some indulgence can fairly be given to the debtor without prejudicing the creditor.
21. Similarly, in the case of *Jabali Alidina v Lentura Alidina* [1961] EA 565, it was held that: -
- “All commentators on the Civil Procedure Code agree that the court’s discretion to order payment of the decretal amount in installments is one which must be exercised in a judicial and not an arbitrary manner. The onus is on the Applicant to show that he is entitled to indulgence under this rule. It is for the Applicant to show “sufficient reason” for indulgence being shown to him...”
22. In the present case, the Applicant has not demonstrated any reason for its inability to settle the decretal sum in one lump sum. Simply put, there is no iota of evidence placed before this Court by the Applicant to demonstrate its inability to pay the decretal amount in lump sum save the assertion that it is facing economic challenges. For instance, the Applicant has not produced financial statements/ audited accounts to show its financial standing. As such, the Applicant’s financial standing and income generating capacity is largely unknown.
23. This Court has also paid due consideration to the circumstances under which the decretal amount came to be. The record bears that it was as a result of an agreement dated 18th February 2021, executed by the Decree Holder and the Applicant in which the two parties agreed on a separation package. As such, the decretal amount in question constitutes the Decree Holder’s terminal dues which have been outstanding for four (4) years now.
24. In light of the foregoing, it is this Court’s view that it will not be fair to allow the Applicant to pay the balance of the decretal amount in instalments of USD 10,000.00.
25. In addition, this Court is enjoined to do justice to both parties and to balance their respective interests. Therefore, bearing in mind that on 28th February 2025, the Applicant made a remittance of USD 20,000.00 to the Decree Holder’s Advocates albeit after the commencement of the garnishee proceedings and further noting that the Court ordered the Garnishee to release to the Decree Holder the sum of USD 20,000.00 on 12th March 2025, the Court will grant the Applicant a reprieve.
26. Accordingly, it is only fair that the following orders do issue;
- a. That the Applicant pays the balance of the decretal amount in two (2) equal consecutive instalments with the first instalment being payable on or before 15th April 2025. The second and final instalment to be paid on or before 15th May 2025. In default of payment of any instalment, execution to issue.
- b. The costs of this Application shall be borne by the Applicant.
- It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MARCH 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Ochola appearing with Ms. Obiri for the Claimant/Decree Holder

No appearance for the Judgment Debtor/Applicant



Millicent Court Assistant

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 15th March 2020 and subsequent directions of 21st 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 had 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 *Civil 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.

STELLA RUTTO

JUDGE

