



**Lyomu v Standard Group PLC (Cause E1059 of 2023)  
[2025] KEELRC 1146 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1146 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E1059 OF 2023**

**SC RUTTO, J  
APRIL 9, 2025**

**BETWEEN**

**ORLANDO LYOMU ..... APPLICANT**

**AND**

**THE STANDARD GROUP PLC ..... RESPONDENT**

**RULING**

1. The instant Notice of Motion arises from a consent that was adopted as an order of this Court on 16<sup>th</sup> October 2024. For context purposes, it is imperative to reproduce the terms of the consent, thus:
  1. Judgment be and is hereby entered in the sum of Kshs.38,342,857/= in favour of the Plaintiff.
  2. Costs of the suit be and are hereby awarded to the Plaintiff, the same to be agreed upon within three (3) months of the date hereof and in default, be taxed.
  3. The amounts at (1) and (2) above be liquidated in reasonable instalments, as may within three (3) months of the date hereof be agreed upon by the parties and, in default, the same be determined by the Honourable Court.
  4. In the interim period, the defendant be and is hereby ordered to commence the initial monthly instalments of Kshs.750,000/= in favour of the Plaintiff, with effect from 1<sup>st</sup> August, 2024, pending the agreement or determination as in (3) above.
  5. Matter to be mentioned on 19.11.2024 to confirm the progress of the settlement.
2. Subsequent to the adoption of the consent, the matter came up for mention on 19<sup>th</sup> November 2024 and 18<sup>th</sup> December 2024, during which Mr. Ashitiva, counsel on record for the Claimant, informed the Court that the Respondent had not honoured the terms of the consent order with respect to payment of monthly instalments. To this end, Mr. Ashitiva asked for leave to commence execution with a view to recovering the balance of the decretal amount.



3. Mr. Kiprono, counsel on record for the Respondent, citing harsh economic conditions, stated that the Respondent was keen on settling the decretal amount in instalments.
4. Subsequently, the Court urged the parties to reach a compromise with respect to the manner of payment of the remaining decretal amount. It is worth pointing out that this was in consonance with the first limb of clause 3 of the consent order.
5. Seemingly, the parties were unable to reach a compromise hence the Claimant moved the Court through the instant Motion through which he seeks the following orders:
  1. That the Honourable Court be pleased to determine the outstanding issues, relative to the Consent Order issued herein on 24<sup>th</sup> October, 2024, as regards the liquidation of the Judgment amount, Costs and interest by issuing its final Judgment herein on those in the following terms, that is to say:-
    - a. That the Judgment sum of Kshs.38,342,857/=, less Kshs.4,507,655.10 thus far paid by the Respondent as at 4<sup>th</sup> February 2025; leaving the due and payable balance of Kshs.33,835,202/=, as at 4<sup>th</sup> February, 2025, be liquidated and paid in one lumpsum, within Twenty (21) days from the date of this Honourable Court's order in that regard.
    - b. That, in the alternative to (a) above, the said Judgment balance of Kshs.33,835,202/=, as at 4<sup>th</sup> February 2025, be liquidated and paid in Six (6) equal-monthly installments of Kshs.5,639,201/=, each payable by the 5<sup>th</sup> day of every month, with effect from 5<sup>th</sup> March, 2025.
    - c. That in addition to the payment of the Judgment balance amount of Ksh.33,835,202/= (as at 4<sup>th</sup> February 2025) at (a) above, the assessed Party and Party Costs in the sum of Ksh.1,021,140/= be paid through the law firm of Nyachae & Ashitiva Advocates on or before 5<sup>th</sup> March 2025.
    - d. That the balance outstanding at any given time and the Party and Party Costs at (c) above, do attract interest at the rate of 14% per annum, effective from 5<sup>th</sup> March, 2025 until payment in full.
    - e. That in default of payment as above or as the Honourable Court may direct, execution for the entire balance plus interest accrued thereon to issue.
  2. That a Decree be extracted and issued by the Deputy Registrar of this Honourable Court in the foregoing terms.
  3. That the Costs of this Application and interest thereon be awarded to the Claimant.
6. The Motion is premised on the grounds set out on its face and the Supporting Affidavit sworn on 11<sup>th</sup> February 2025 by Orlando Lyomu, the Claimant/Applicant herein. Grounds in support of the Motion are that in total disregard and contemptuous attitude, the Respondent has failed and/or refused to adhere to the interim liquidation terms of the consent order, despite multiple requests from the Claimant and has so far made payments totaling Kshs 4,507,655.10.
7. That the Respondent, like all Judgment debtors in similar cases, is under an obligation to liquidate the Judgment amount and costs in one lumpsum.



8. Mr. Lyomu deposes in his Affidavit that the Respondent has failed and/or refused to comply with the terms of the consent order despite numerous requests from his advocates on record and has not provided any reasonable payment terms or instalment proposals towards settling the consent amount.
9. It is further averred that no application and/or evidence has been put forth by the Respondent and therefore, prompt payment of the judgment sum and party and party costs in lumpsum is the only remedy available to the Claimant.
10. That further, the Respondent's continued refusal to settle the Judgment amount in instalments or otherwise has caused immense hardship to the Claimant and his family.
11. It is the Claimant's contention that his salary arrears and accrued leave days comprised in the Judgment amount, have been unjustly withheld by the Respondent for over a year, leaving him with no other means to support his family and, as a consequence, they have suffered and continue to suffer adversely and are deprived of basic needs, including food, school fees, medical care and clothing.
12. That further, the Claimant has no other means to recover the Judgment amount unless the Respondent is compelled to pay the same through execution.
13. Mr. Lyomu believes the Respondent has no intention of paying the balance of the judgment amount in the sum of Kshs 33,835,2020/= as at 4<sup>th</sup> February 2025 plus party and party costs.
14. The Application is opposed through the Replying Affidavit sworn on 24<sup>th</sup> February 2025 by the Respondent's Legal Officer, Jesse Waigwa. Mr. Waigwa deposes that the Application is bad at law, blatantly unreasonable and untenable before the law since it is laden with absurd demands that ought not to be countenanced by this Honorable Court. He urged the Court to dismiss the same with costs.
15. Mr. Waigwa avers that the mode of settlement of the decretal sum as per the consent entered into by the parties has not been breached in any way by the Respondent.
16. He is advised by the Respondent Company's advocates on record, which advice he verily believes to be true, that as per the Supreme Court in Geoffrey N. Asanyo & Others vs The Attorney General [2018] eKLR, a consent takes effect upon adoption by Court.
17. That the consent order therefore took effect and became enforceable on 24<sup>th</sup> October, 2024.
18. That by its own acknowledgement under Ground 3 of his application, the Applicant concedes that upon issuance of the consent order, the Respondent has cumulatively made several payments amounting to Ksh.4,507,655.10 for and on his behalf.
19. That the interim liquidation orders provided for a payment of Kshs. 750,000/= monthly for the first three (3) months pending agreement of the parties and/or determination by the court on liquidation thereof and as at the lapse of the three (3) months, it had advanced a total of Ksh.3,807,655/= which, in any event, exceeds the expected minimum agreed amount projected at the close of the first three (3) months, being Ksh.2,250,000. In Mr. Waigwa's view, this is a demonstration of good faith on the part of the Respondent towards satiating the terms of the consent order.
20. It is Mr. Waigwa's assertion that the interim part of the consent entered by the parties has been fully satisfied upon the adoption of the order, in which it became valid for enforcement. He contends that the Consent cannot be said to have been implemented retrospectively within the operation of law.
21. Mr. Waigwa further avers that the Applicant's assertion that the terms of the consent have been violated is not factual and only serves to invoke conjecture on the part of the Respondent concerning the Applicant's disingenuous intentions when entering the consent from the onset.



22. He further avers that the Applicant's plight to set aside the consent on the grounds of non-compliance by the Respondent will invalidate the entire consent and hence snatch the ground on which it stands to claim the full decretal amount from under his own feet.
23. According to Mr. Waigwa, the application brought under the latter alternative is a demonstration of greed and a draconian proposal which demands of the Respondent, full remittance of the balance of the decretal sum in one lump sum; a proposition that entirely beats the essence of the entry of the consent in the first place and that which fights against ordinary principles of logic.
24. That the Respondent has made a proposal of continuing to make periodic payments of Ksh.750,000/= on a monthly basis, which is a reasonable and practical proposal. According to Mr. Waigwa, the Respondent has proven that it is willing and able to pay that amount, sometimes even exceeding the monthly threshold.
25. That notwithstanding that proposal consented to, whose fruits he has all along enjoyed, the Applicant has rejected that particular proposal even in the Respondent's willingness to make arrangements to increase the amount to Ksh.1,000,000/= on a monthly basis after restructuring its income and expenditure projections.
26. Mr. Waigwa contends that there has been no meaningfully objective contribution by the Applicant with regard to the negotiation of a new payment plan.
27. In Mr. Waigwa's view, the Applicant is now hell-bent on activating the execution against the Respondent after taking it through a wild chase of entering a consent when he did not have intentions to live within the expectations accruing from the said consent.
28. It is Mr. Waigwa's deposition that the Applicant has not demonstrated that the Applicant has abandoned its obligations under the consent nor the general effort towards payment of the decretal sum. He avers that the Respondent has already made two substantial payments to the Applicant in the month of February.
29. Mr. Waigwa further avers that the Respondent is a media company with a reputation to protect.
30. That further, breaking in and carting off its property on the basis of a consent that prevented full trial of the matter is tantamount to enabling the Applicant to have its cake and eat it.
31. Mr. Waigwa avers that the application has thrown the Respondent into the arena of confusion; it does not know whether to defend this suit while withholding any further payment, to continue making payment as prayed for by the Applicant and/or which amount to service.
32. In a rejoinder, the Claimant filed a Further Affidavit sworn on 3<sup>rd</sup> March 2025, in which he avers that the default or fall-back position in matters settlement of decretal amounts is always payment of the entire amount, unless otherwise permitted by the Court to pay in reasonable instalments. That even then, only if the Judgement-Debtor moves and proceeds to demonstrate to the Honourable Court that its/his/her financial situation, via tangible evidence, is such that it/he/she should be so permitted.
33. Mr. Lyomu avers that irrespective of whether the Respondent was up to date with the initial interim instalments or not, this application became necessary at the lapse of three (3) months envisaged in the consent. That his application seeks to enforce and fulfil the terms of the consent.
34. That the consent is abundantly clear as regards the obligations of the Respondent and, the interim period for payment in instalments having lapsed, the entire balance, in terms of the default/fall-back position, became immediately and automatically payable at once/in lump sum.



35. He further avers that owing to the failure by the Respondent to offer reasonable party and party costs and instalment payments of the decretal amount within the timelines envisaged in the consent, he proceeded to have the Costs assessed.
36. In Mr. Lyomu's view, the obligation to pay the entire decretal amount crystalized upon the signing and filing of the consent in Court on 25<sup>th</sup> July, 2024 and that the interim instalments, which have the effective date of 1<sup>st</sup> August, 2024 clearly stipulated therein, were only to last until 1<sup>st</sup> November, 2024.
37. According to Mr. Lyomu, reckoning time from the relevant date of 1<sup>st</sup> August, 2024, as envisaged in the consent, to February 2025 would give Kshs.5,250,000/=, as opposed to Kshs.4,507,655/= that has been paid by the Respondent, leaving a deficit of Kshs.742,345/=, as at 3<sup>rd</sup> March, 2025.
38. It is worth mentioning that the party and party costs were assessed and taxed at Ksh.1,021,140/=.

### **Analysis and Determination**

39. It is trite that a consent by the parties once formally adopted by the Court becomes an order of the Court. On this score, the parties herein are on the same page. Indeed, what is in contention in this case is clause 3 of the consent order, which is couched as follows:

“(3) The amounts at (1) and (2) above be liquidated in reasonable instalments, as may within three (3) months of the date hereof be agreed upon by the parties and, in default, the same be determined by the Honourable Court.”

40. As can be discerned from the above term of the consent, the Claimant and the Respondent were to agree on the instalments payable and in default, the Court was to determine the same.
41. As stated herein, the Court urged the parties to reach a compromise with respect to the instalment amounts payable. No settlement was forthcoming, hence the instant Application through which the Claimant has invoked the Court's intervention pursuant to the second limb of the aforementioned clause 3 of the consent order.
42. My construction of clause 3 of the consent order is that the parties in principle, agreed to have the judgment amount together with costs “liquidated in reasonable instalments”. These instalments could be upon agreement by both parties and, in default, determined by the Court.
43. In the instant Motion, the Claimant has asked the Court to order that the balance of the judgment sum be liquidated and paid in one lump sum within 21 days from the date of the Court's order. Alternatively, the balance of the judgment sum be liquidated and paid in six (6) equal monthly instalments of Kshs 5,639,201/= each payable by the 5<sup>th</sup> of every month with effect from 5<sup>th</sup> March 2025. With respect to party and party costs, the Applicant seeks an order that the same be paid through the law firm of Nyachae and Ashitiva Advocates on or before 5<sup>th</sup> March 2025.
44. The basis of the Claimant's prayers is that the Respondent has failed and/or refused to adhere to the interim liquidation terms of the consent order, despite multiple requests. That this has caused him immense hardship.
45. The Respondent has refuted the Claimant's assertions and has averred that the interim part of the consent entered by the parties has been fully satisfied. That the Claimant has not demonstrated that it has abandoned its obligations under the consent.
46. The record bears that the Respondent's assertion is not entirely factual. I say so on the basis that when the matter came up for mention on 18<sup>th</sup> December 2024 to track the progress of the settlement, it



became apparent that the Respondent was not up to date with respect to the payment of instalments as per clause 4 of the consent order. This prompted the Court to issue the following order:

“The Respondent do forthwith comply with the terms of the consent order as follows:

To pay the Claimant the sum of Kshs 1.5 million on or before 23<sup>rd</sup> December 2024; and the sum of Kshs 1.5 million on or before 31<sup>st</sup> December 2024; and thereafter to regularize the payment of the monthly installments as and when they fall due.”

47. Therefore, the claims by the Claimant are not farfetched.
48. As can be discerned from the Affidavit of Mr. Waigwa, the Respondent is desirous to continue paying the instalments in the sum of Kshs 750,000/= per month.
49. Under Order 21 Rule 12 (2) of the Civil Procedure Rules, the Court may order payment of the decretal amount by instalments except that the applicant must demonstrate sufficient cause as to why the Court should exercise such discretion.
50. As stated herein, the Claimant and the Respondent agreed in principle to have the decretal amount settled by way of reasonable instalments. Therefore, the question that remains to be determined is the instalment amounts to be paid towards the settlement of the judgment amount and costs.
51. I must say that despite the Respondent urging the Court to sustain the payment of the instalment amounts at Kshs 750,000/=, it did not adduce any evidence to prove its financial ability. As such, the Respondent’s financial standing and income-generating capacity remain largely unknown.
52. Besides Mr. Kiprono’s word that the Respondent is operating under a harsh economic environment, there is no tangible evidence to guide the Court in determining what would be reasonably payable in instalments.
53. This being the case, the Court has taken into account a number of factors, key among them being the circumstances under which the judgment amount came to be. From the Statement of Claim, the Claimant’s prayers under the head “special loss” constituted salary arrears, six (6) months’ salary in lieu of notice, unpaid leave and bonus for the month of March 2023. Notably, this amount is in the sum of Kshs 38,342, 857/= hence I am led to conclude that the judgment amount in the consent order was drawn from the aforementioned reliefs, which are essentially special claims. Fundamentally, these are claims arising from the Claimant’s contract of employment and the *Employment Act* as of right. Accordingly, it is only fair and just that the said payments should not be left outstanding for an unreasonably long period.
54. Doing the best I can in the circumstances and to balance the interests of both parties, it is hereby ordered as follows:
  - a. That the Respondent pays the balance of the judgment amount in twelve (12) equal consecutive instalments with the first instalment being payable on or before 5<sup>th</sup> May 2025. Subsequent instalments to be paid on or before the 5<sup>th</sup> day of every month until payment in full.
  - b. That the assessed party and party costs in the sum of Ksh.1,021,140/= be paid in two (2) equal consecutive instalments through the law firm of Nyachae & Ashitiva Advocates on or before 5<sup>th</sup> May 2025.
  - c. In default of payment of any instalment, execution to issue.



d. There will be no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF APRIL 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

Mr. Ashitiva for the Claimant/Applicant

Mr. Kiage for the Respondent

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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

