



REPUBLIC OF KENYA



KENYA LAW
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**Ponty Pridd Holdings Limited v Oduya (Appeal E050 of 2024)
[2025] KEELRC 1065 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1065 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E050 OF 2024
NZIOKI WA MAKAU, J
APRIL 4, 2025**

BETWEEN

PONTY PRIDD HOLDINGS LIMITED APPELLANT

AND

ENOSH ANYANGE ODUYA RESPONDENT

RULING

1. Before the Court for determination is an application dated 20th March 2025 by the Appellant. In it, the Appellant/Applicant sought the following orders:
 - a. spent
 - b. The Honourable Court be pleased to grant an order of stay of execution of the judgment delivered on the 18th February 2025 pending hearing and determination of this Application inter-partes.
 - c. The Honourable Court do grant leave to the Applicant to pay the decretal sum in instalments of Kshs. 50,000/- per month commencing the 30th March 2025 till payment in full.

The motion was supported by the affidavit of Mr. Anthony Mburu Wainaina and the grounds on the face of the motion.

2. The Appellant/Applicant in brief summary of the grounds and affidavit, asserts that it is Applicant being a logistics company is currently struggling financially due to constricted economic environment and the ever-changing government policy that has greatly impacted on businesses. The Applicant asserts that though it is willing to pay the decretal amount, it does not have the capacity to pay the whole amount granted by the award immediately and in lump sum. The Applicant avers it needs ample time to raise the required money to enable it clear the decretal sum and that it is ready and willing to pay the decretal sum in instalment sums of Kshs. 50,000/- per month effective 30th March 2025.



The Applicant asserts it is apprehensive that if the orders sought are not granted, the Respondent shall proceed to execute the decree by attaching the Applicant's properties which are majorly leased motor vehicles from third parties inhibiting its ability to do business occasioning irreparable loss to the learners. The Applicant posits that the proposed payment plan will ensure that its operations continue running even as it pays the debt.

3. The Respondent was opposed to the motion and filed a Replying Affidavit sworn by the Respondent's Counsel Mr. Arnold Oriwa. He depones that from the onset, the application lacks merit and is a ploy for forum shopping and curved in a manner to delay the Respondent from getting justice. He posits that the Application's very nature is strange in law, premised and founded on wrong provisions of the law as it does not in any manner invoke the Court's discretion to be exercised in the way in which it has been designed. He asserts that the timing and filing of the application is typical scenario of a feeble attempt to conjugate the Honourable Court into relying on false Information and half-truths intended to aggregate a narrative that never existed in the first place. He stated that the Applicant had a period of over a month and a few days before approaching the Court and never intimated to the Respondent that it was keen to settle the decretal sum albeit by instalment. He deponed that litigation should come to an end and that the Respondent was desirous of enjoying the fruits of his judgment. It was asserted that the current application betrays the concept of bringing an application to an ultimate end and thus not supported by any provisions of the law. He posits that it is therefore prudent and in the best interest of justice, fair and equitable in the circumstances that this Honourable Court exercises its authority and discretion in favour of the Respondent by dismissing the application with costs.
4. The parties articulated their rival positions in submissions before the Court on 3rd April 2025 whereat the Court deferred the Ruling to this morning. In brief, the Applicant submits that there was a request to pay the decretal sum by instalment but the request was rejected by the Respondent hence the motion in court.
5. The Respondent on his part submits that the procedure invoked by the Applicant was wrong rendering the application incompetent. He submitted that where a party seeks to pay a debt by instalment there must be a substantial payment. He cited the case of *Keshavji Jethabhai & Bros Limited v Saleh Abdullah* (1959) EA 260, where the Court of Appeal held that:

“The mere fact that the debtor is hard pressed or is unable to pay in full at once is not sufficient reason...; ordinarily, he should be required to show his bona fides by arranging prompt payment of a fair proportion of the debt...”
6. The Respondent submitted that the Court should weigh both sides and apply the principles in Article 159 to administer justice without undue delay. The Respondent cited the case of *Mwangi Kengara & Company Advocates v Kibe* (Miscellaneous Civil Application E058 of 2021) [2023] KEELC 20054 (KLR) (23 August 2023) (Ruling) where the Court held that

The applicant had not demonstrated any reason for its inability to settle the decretal sum in one lump sum. There is no iota of evidence save the statement that it is was in an environment of tough economic hardship. This statement is relative. One must demonstrate sufficient reason so as to attract the courts discretion.
7. Counsel for the Respondent thus urged the Court to decline to grant the motion.
8. In a brief reprise, Counsel for the Appellant submitted that there had not been an offer to deposit the entire decretal sum at the point of making the application for stay but rather an offer to abide by any condition the Court would impose for the grant of stay. He argued that the date when the debt was



due was after the judgment of the Court and that there was a prompt offer to pay by the Appellant which offer was spurned by the Respondent. He thus urged the grant of the reliefs as prayed for in the Appellant's motion.

9. The Court has been asked to consider the Appellant's prayer for payment of the decretal sum by instalment. The Court must, when exercising such discretion as that sought by the Appellant be conscious of Article 159 which eschews technicalities. As such, the Respondent's surmise of the procedure the Appellant applied in seeking the relief herein must be weighed against the requirement to do justice without undue regard to technicalities. The Court apprehends that the Appellant is seeking to be allowed to pay the decretal sum piecemeal. The same is opposed by the Respondent who feels he has been kept away from enjoying the fruits of his judgment. The sum in contention is a sum slightly over Kshs. 800,000/-. In deciding whether there is basis for the grant of the prayers sought by the Appellant, the Court will be guided by established principles on similar cases. The Respondent cited 2 authorities which clearly outlined the factors a court must consider. These are
 - 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.
10. These 4 principles thus must guide a court when determining whether the judgment debtor can be given some indulgence without prejudicing the decree holder. The mere inability to pay the sum in full at once is not a sufficient reason for the exercise of the discretion. The Appellant herein indicates that due to the harsh economic environment and the prevailing Government directives it is unable to pay the entire decretal sum. No books of account were offered to show the difficulties on account of perhaps flailing business or the said harsh economic times. As such, the Court discerns there may be a problem paying the full sum but does not see much by way of evidence for it.
11. The other notable principle highlighted in the 2 cases is the making of arrangements to meet a fair proportion of the decretal sum to demonstrate bona fides. In this case the Appellant did not do this and offers a sum of Kshs. 50,000/- a month which would mean the repayment would be stretched to 16 months – in total time computing to a year and 4 months. In my considered view, the fair proportion aspect would be best met by a payment of say Kshs. 500,000/- or thereabout within 14 days and the balance by way of equal monthly instalments of Kshs. 50,000/- until payment in full. That is what would meet the requirement of showing bona fides in terms of the law.
12. The Court considers that a fair proportion of the debt would be ranging towards the halfway mark and therefore computes that a sum of Kshs. 400,000/- may suffice for the purposes of meeting the bona fides aspect of payment of a fair proportion. The Court accedes that thereafter the proposed instalments would suffice to ensure payment of the entire decretal sum within the year. The final order is that the Appellant is granted permission to pay the sum owed to the Respondent by way of instalments as follows:-
 - a. Kshs. 400,000/- within 14 days of today.
 - b. Kshs. 50,000/- at the end of each succeeding month till payment in full.



- c. In default of payment of any one instalment when due, the entire balance to be come due and execution to issue for the balance unpaid at the point of default.
- d. Each party to meet their own costs for the application before me.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 4TH DAY OF APRIL 2025

NZIOKI WA MAKAU, MCIArb.

JUDGE

