



REPUBLIC OF KENYA



**Mbukua v Water Services Trust Fund (Cause 1323 of 2017)
[2024] KEELRC 2584 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2584 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1323 OF 2017
CN BAARI, J
OCTOBER 24, 2024**

BETWEEN

ROSAITA NGINA MBUKUA CLAIMANT

AND

WATER SERVICES TRUST FUND RESPONDENT

RULING

1. Before the Court is an application for settlement of accounts emanating from the Judgment delivered by Hon. Justice Rika on 27th May, 2022 in favour of the Claimant in the sum of Kshs.5,280,000/-.

Background

2. The crux of the Application is that on 27th May, 2022 the Court entered Judgment and awarded the Claimant the sum of Kshs.5,280,000/- together with costs and interest from the date of Judgment until payment in full.
3. Subsequently, the Claimant filed a bill of costs for taxation dated 12th July, 2022, and which Bill was taxed on 30th September, 2022, in the sum of Kshs.311,838.33/-.
4. The Respondent filed two (2) Applications dated 1st September, 2022 and 7th March, 2023, seeking inter alia clarification from the Court on whether Kshs.2,129,000/- paid to the Claimant by the Respondents during the proceedings was deductible from the Judgment entered on 27th May, 2022, and stay of execution of Judgment and setting aside of warrants of execution and proclamation respectively.
5. On 19th April, 2023, the Court delivered a Ruling on the applications holding that the sum of Kshs.2,129,000 was not deductible from the judgment sum; that the Judgment sum was subject to statutory deductions and finally that the warrants of execution and proclamation were issued illegally and were set aside.



6. The Claimant subsequently filed an application dated 6th December, 2023 under a Certificate of Urgency seeking orders to direct the Respondent's Managing Director to attend Court to show cause why execution should not issue against the Respondent for failure to satisfy the Judgment sum. Consequently, on 6th February, 2024 the Court allowed the application the same having been unopposed.
7. The matter came for mention on 4th April, 2024, wherein, the Claimant informed the Court that the Respondent has been making partial payments of the judgment debt, but had not settled the entire decretal sum. On its part, the Respondent claimed that it had settled the full amount including costs and interest.
8. In view of the disagreement, the Court directed reconciliation of accounts, which was to be carried out with the assistance of the Deputy Registrar, and further directed parties to file Affidavits annexing documentation on payments made and parties may return to court with the necessary application after reconciliation of the accounts.
9. Parties appeared before the Deputy Registrar on 15th April, 2024 and 30th July, 2024 and informed the Court that after negotiations they had failed to reach an agreement on the settlement of accounts. The Claimant claimed that the outstanding sum due from the Respondent stood at Kshs.1,459,471.29/- while the Respondent's position is that it had settled the judgment sum in full.
10. The Deputy Registrar referred the matter back to this Court for directions on settlement of accounts.
11. The Claimant filed its Replying Affidavit dated 1st July, 2024 and the Respondent filed its Affidavit dated 12th April, 2024.

Claimant's Case

12. The Claimant through its Counsel, Judith A. Guserwa filed a Replying Affidavit dated 1st July, 2024 to substantiate its accounts as directed by the Court.
13. The Claimant avers that prior to the hearing of the matter, the Respondent vide a letter dated 8th October, 2019 proposed to pay the Claimant the undisputed part of the Claim and thereby remitted the sum of Kshs.2,208,260.75/= after statutory deductions.
14. Subsequently, the court delivered Judgment in favour of the Claimant awarding an amount of Kshs.5,280,000/= together with costs and interest.
15. The Claimant contends that the Court through a ruling delivered on 19th April, 2023 clarified that the amount paid by the Respondent prior to the judgment was not deductible from the award issued.
16. The Claimant further states that the total judgment sum due from the Respondent as awarded by the Court amounted to Kshs.5,591,838.33/= comprising of Kshs.5,280,000/= as the principal award and 311,838.33/= as costs of the suit.
17. The Claimant avers that the interest payable is at the rate of 12% running from the date of judgment until payment in full, a fact that has not been contested by the Respondent.
18. The Claimant avers that it received a sum of Kshs.2,447.671/= on the 23rd December, 2022 as the 1st Post judgment payment. She states further that the accrued interest from the date of the 1st payment was Kshs. 386,985.85/= therefore, the Claimant avers that the total sum due as at 23rd December, 2022 was Kshs.5,978,824.18/=.



19. The Claimant avers that it received the second 2nd payment from the Respondent on the 2nd April, 2024 in the sum of Kshs.2,654,831.76/=.
20. The Claimant further avers that the accrued interest running from 23rd December, 2022 to 2nd April, 2024 was Kshs.541,282.25/= hence the outstanding amount due from the Respondent was Kshs.4,072,435.43/=.
21. The Claimant claims that when computing the total payments made and the outstanding amounts due, the outstanding Judgment sum stood at Kshs.1,417,603.67/=.
22. The Claimant further alleges that the outstanding sum has since attracted interest running from the 2nd April, 2024 to 1st July, 2024 in the sum of Kshs.41,867.62/=.
23. The Claimant is of the position the Respondent has not fully settled the Judgment sum and that it stands to suffer loss as a result of the total outstanding amount currently in the sum of Kshs.1,459,471.29/= which the Claimant avers that the Respondent has failed to pay without justification.

Respondent's Case

24. In response, the Respondent through an affidavit sworn by one Mr. Samwel Gitau Mbugua on 12th April, 2024, averred that the Claimant had disclosed to the Court that she had been paid the amount of Kshs.2,129,000/= on 19th February, 2020 and failed to disclose that the actual sum paid by the Respondent was Kshs.3,144,166.75/= less statutory deductions.
25. The Respondent concurred that the interest rate payable was 12%.
26. The Respondent claimed that it made a second payment to the Claimant in the sum of Kshs.2,447,671/= comprising of the judgment sum and costs on 23rd December, 2022.
27. The Respondent further states that the interest payable for the period of 6 months from the date of Judgment until December, 2022 is Kshs.128,150/=.
28. The Respondent claims that the outstanding sum as at December, 2022 stood at Kshs.2,088,166.75/= and the interest applicable for the said sum was Kshs.438,515.02/= as of March, 2024, amounting to Kshs.2,654,831.76/= less 30% income tax on 2,088,166.75/= ie Kshs.626,450.03/=.
29. The Respondent asserts that it cleared the outstanding sum on the 2nd April, 2024 though payment of Kshs.2,028,381.74/=.

Analysis and Determination

30. I have considered the Parties' Affidavits together with the annexed documentation filed as prove of payments made. The issue for determination is whether the Respondent has fully cleared the judgment sum and if not, what is the outstanding amount due.
31. In a Judgment of this court (differently constituted) delivered on 27th May, 2022, the Claimant was awarded the sum of Kshs.5,280,000/-. Costs were subsequently taxed at Kshs.311,838.33/= making the Judgment sum Kshs.5,591,838.33/=.
32. The Respondent claims to have made the first payment to the Claimant in the sum of Kshs.3,144,166.75/= less statutory deductions prior to the entry of Judgment on 20th February, 2020. On whether this amount was to be deducted from the decretal sum, Justice Rika in a ruling rendered 19th April, 2023 ruled that the amount paid before judgment was not to be deducted.



33. It is not disputed that costs were taxed at Kshs.311,838.30. The Respondent's assertion is that interest was a total amount of Kshs.128,150 for the amount paid in December, 2022.
34. The question thus, is whether the amount paid so far constitutes the entire decretal sum inclusive of taxed costs and interests as awarded.
35. The affidavits filed on the matter together with the annexures therein, indicates that the Respondent paid Kshs.2,447,671 on 23rd December, 2022 and Kshs.2,028,381.74 on 2nd April, 2024. The Claimant has not disputed these payments which confirms that the amount paid so far is a total of Kshs.4,476,052.74/-.
36. The principal sum awarded is Kshs.5,280,000. The taxed costs is Kshs.311,838.30/-, making a clear sum of Kshs.5,591,838.30/- exclusive of interest which was awarded at the rate of 12% per annum.
37. It is not in dispute that the Respondent has paid a total of Kshs.4,476,052.74/- out of the decretal sum minus interest. It is then clear to this Court that the Respondent still owes the Claimant a total of Kshs.1,115,785.56/-.
38. In light of the foregoing, I find that the Respondent has not fully settled the decretal sum, and that the outstanding amount due from the Respondent is Kshs.1,115,785.56/- (exclusive of interest), and which sum is subject to statutory deductions.
39. It is ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
24TH DAY OF OCTOBER, 2024.**

C. N. BAARI

JUDGE

Appearance:

Ms. Okondo h/b for Ms. Guserwa for the Claimant

Mr. Letare h/b for Mr. Waigwa for the Respondent

Mr. Kirui - C/A

