



Kenya Hotels and Allied Workers Union v Nyanza Club (Cause E004 of 2021) [2023] KEELRC 947 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 947 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E004 OF 2021
CN BAARI, J
APRIL 27, 2023

BETWEEN
KENYA HOTELS AND ALLIED WORKERS UNION CLAIMANT
AND
NYANZA CLUB RESPONDENT

RULING

1. The Respondent/Applicant's motion before court is dated 22nd February, 2023 and filed on 27th February, 2023. The Applicant seeks that the Court allows it to pay the decretal sum of Kshs. 5,227,548/- in instalments of Kshs. 100,000/- per month until payment in full.
2. The application is supported by grounds on the face and the affidavit of One Milton Owino. The basis of the application is that the Applicant/Respondent is unable to pay the entire decretal sum at once due to financial constrains arising from closure of the club during the covid-19 pandemic.
3. The Applicant further argues that its financial situation has been further worsened by demolition of its club house by the caretaker committee, which demolition has grossly affected its income.
4. The Respondent/Claimant opposed the application vide a replying affidavit sworn by Chadwick Oloto Ngonzo on 6th March, 2023. The Respondent/Claimant argues that the Applicant's hands are not clean having previously failed to obey court orders when it was in sound financial status.
5. It is the Respondent/Claimant's further assertion that the financial report filed before court does not reflect the Applicant's true financial status and is not sufficient ground to grant the orders sought.
6. Parties urged the application orally on 13th March, 2023, reiterating their foregoing grounds in support and those in opposition to the grant of the orders.



Determination

7. I have considered the Applicant's motion together with the grounds in support 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. 100,000/-
8. 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.”
9. An order to settle a decretal sum in instalments, is a discretion power of the Court 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.
10. Judgment in this matter was rendered in February, 2022, when the Court directed that parties file a joint computation of the amounts owing and payable to the Respondent/Claimant. The Applicant/ Respondent did not adhere to the orders of the Court resulting in the court adopting the computation filed by the Respondent/Claimant, and which the Applicant now seeks to pay in monthly instalments.
11. In my view, although the Applicant may have faced financial hardship during the Covid.19 pandemic, it has not shown seriousness or commitment to pay the decretal amount. For this reason, I issue orders as follows: -
 - a. That the Applicant pays the Claimant/Respondent Kshs. 1,000,000/- of the decretal sum within 30 days of this order.
 - b. That thereafter, the Applicant/Respondent to continue repaying the balance in monthly instalments of Ksh. 100,000 until payment in full.
 - c. That in default of any one instalment, execution to issue.
12. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 27TH DAY OF APRIL, 2023.



CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. E. Ngame present for the Claimant/Respondent

Ms. Nyakongo h/b for Mr. Ngala for the Respondent/Applicant

Ms. Christine Omollo-C/A

