



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Nyambarora v Robinson Investment Ltd (Employment and Labour Relations Cause 288 of 2016) [2023] KEELRC 1351 (KLR) (30 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1351 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 288 OF 2016**

HS WASILWA, J

MAY 30, 2023

BETWEEN

JOB ONYINKWA NYAMBARORA CLAIMANT

AND

ROBINSON INVESTMENT LTD RESPONDENT

RULING

1. This Ruling is in respect of the Respondent/ Applicant's Notice of Motion dated March 10, 2023, filed under certificate of urgency pursuant to Sections 1A, 1B & 3A of the Civil Procedure Act, Order 22 Rule 12, Order 51 of the Civil Procedure Rules, Articles 159 of the Constitution and all enabling provisions of law seeking for the following Orders;
 1. Spent.
 2. That there be a temporary stay of execution against the attachment and sale of any of the Respondent's movable properties in recovery of debt owing to the claimant herein pending the hearing and determination of this application interpartes.
 3. There be stay of execution and all consequential orders and or proceedings arising therefrom pending the hearing and determination of this application interpartes.
 4. The Respondent/Applicant be granted leave to liquidated the outstanding amount of Kshs. 365,358 plus taxed costs of equal monthly instalments of Kshs 50,000 until payment in full.
 5. Cost of this Application be provided for.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Jim Joe Njoroge, the Respondent's director, sworn on the March 10, 2023.



3. The affiant states that Judgement in this case was entered on October 6, 2022 for the claimant's as against the Respondent/ Applicant herein in the sum of Kshs. 365,358.54 plus costs less statutory deductions.
4. On October 27, 2022, the Applicant received a copy of the judgment and the claimant Advocate's Bill of costs dated October 24, 2022 and he immediately instructed its advocates to write to the claimant's advocates and seek to settle the decretal sum in instalments of Kshs 50,000 per month.
5. He stated that the reason they are seeking to pay the decretal sum in installments is because, the Respondent/ Applicant is facing financial challenges that has forced it to close its Branches in Nakuru and Kisumu and thus are unable to pay the entire sum in lump sum.
6. He stated that while negotiations were ongoing between the parties Advocates and before the Bill of costs was taxed, he issued a cheque of Kshs. 50,000 through their advocates and forwarded to the claimant's advocates on the January 19, 2023, However the said cheques was rejected by the claimant's and returned back to them.
7. The claimant has now threatened the Applicant with execution and if stay of execution is not granted the substratum of the Application will be lost and the Respondent's will be financially crippled further.
8. It is the Applicant's case that the company is facing other financial obligations for payment of huge decretal sum as directed by this Court in Nakuru ELRC Causes number 75 of 2017, 169 of 2016, 39 of 2020 and 291 of 2016 which awarded the claimants' Kshs 220,346, 142,025, 200,000 and 622,595 Respectively. Additionally, that he still has other employees that depend their livelihood on the company and if execution is allowed to be carried out in lump sum for this case, the company is likely to go under to the detriment of its directors and the employees still under its employ.
9. The affiant urged this Court to exercise its discretion in the interest of justice and fairness and allow the Application herein in order to save the company from Bankruptcy.
10. He stated also that the application has been filed in a timely manner and that no prejudice will be visited on the claimant because they will eventually receive their decretal sum.
11. The application is opposed by the Claimant/ Respondent herein who filed a replying affidavit deposed upon on the March 22, 2023 stating that the decretal sum together with taxed costs and interest stands at Kshs 541,159.75 which amount gains interest each day.
12. He stated that the Applicant did not approach the claimant in an official way and communicate its intention to pay the said money in monthly instalments as alleged but that he only send the cheque of part payment without having any agreement to that effect.
13. The claimant through their advocate protested the way in which the Applicant was forcing part payment of the decretal sum before the parties consent on the same and instead of giving proper response or explanation, the Applicant went mute, forcing the Claimant to demand the entire decretal sum from the Applicant.
14. He stated that the allegations that the Respondent is facing financial challenges is without any material proof to be verified by the them and this Court. Further that the allegations that any of the branches was closed has not been proved to ascertain the allegation of financial constrains purportedly faced by the Applicant.



15. Nonetheless, that the doors of negotiations have not been shut on part payment as long as the instalments are reasonable to ensure the dignity of the claimant is maintained who had been greatly affected by the loss of employment.
16. The allegations that the Applicant has been overburden with Court awards should not be an excuse from paying the decretal sum, because the Applicant is the author of its own misfortune, having terminated the services of its employees without following the law.
17. The Respondent herein also took issue with the time in which the claimant took to file this Application and stated that the six months' duration between the time judgment was entered and this Application filed has not been explained.
18. The Respondent concluded that the application herein is meant to delay and deny him the fruits of his judgement and reiterated that the Applicant did not properly approached him and his advocates on seeking to pay the money in installment as such the Application should be dismissed with costs to him.
19. Directions were taken for the Application to be disposed of by written submission however the Respondent opted to rely on its replying affidavit.

Applicant's Submissions.

20. The applicant submitted that the gist of the Application is seeking to pay the claimant's decree and taxed costs in instalment. He argued that Order 21 Rule 12(1) of the *Civil Procedure Rules* empowers the Court to make an orders for the postponement of payment of a money decree or for payment of the said decree in instalments which they are urging this Court to allow.
21. It was submitted that the Applicant has shown cause why they are unable to pay the entire decretal sum, owing to its financial challenges and the huge awards granted in different files in this Court which they are obligated to meet but can only do so if allowed to pay in instalments. He added that justice will be served to both parties if the applicant is allowed to pay the decretal sum in instalment because the company will also be saved from bankruptcy which will save the livelihood of the remaining employees in the Respondent's employ.
22. The Applicant urged this Court to be guided by the Oxygen principle as provided for under section 1A, 1B and 3A of the *Civil Procedure Act* in allowing the Application herein. Further that the application was made on the same day when the ruling was delivered on taxed costs which formed the decretal sum that is the subject of the Application herein, therefore that they could not make any payment before the entire decretal sum and taxed costs was known. He urged the Court to allow the Application as prayed.
23. I have examined all the averments and submissions of the parties herein.
24. The gist of the application is to allow the applicants pay the decretal sum in instalments.
25. The applicants have submitted that their financial position is fragile as a company hence this application.
26. They have offered to pay 50,000/= per month until payment in full.
27. I find the applicants have explained in a valid way why they seek orders sought especially their being faced with multiple causes to settle.
28. This is a genuine reason that would enable the applicants settle the decretal sum without further delay whilst affording the resolution of this dispute.



29. I allow the application and order that the applicant pay the respondent 100,000/= in one instalment and balance in monthly instalments of 50,000/= per month until payment in full.
30. Each instalments be remitted by the 5th day of each month until payment in full.
31. Costs in the cause.

RULING DELIVERED VIRTUALLY THIS 30TH DAY OF MAY, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Mr. Mburu for Claimant – present

Miss Mwathi for Respondent - present

Court Assistant – Fred

