



REPUBLIC OF KENYA



KENYA LAW
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Vintz Industries Limited & another v Mutua & another (Miscellaneous Application E003 of 2021) [2023] KEELRC 1712 (KLR) (13 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1712 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E003 OF 2021**

MN NDUMA, J

JULY 13, 2023

BETWEEN

VINTZ INDUSTRIES LIMITED 1ST APPLICANT

TRIDENT INSURANCE COMPANY LIMITED 2ND APPLICANT

AND

ADRIAN WAMBUA MUTUA 1ST RESPONDENT

JOYLAND AUCTIONEERS 2ND RESPONDENT

RULING

1. The applicant in the notice of motion application dated January 5, 2023 prays for an order in the following terms:-
 1. Spent
 2. Spent
 3. Spent
 4. That the honourable court do exercise its judicial discretion to allow the applicants to liquidate the judgment amount of Kshs 1,254,891/= by making payments in three equal monthly installments of Kshs 418,297/= until settlement in full.
 5. That in the alternative, this honourable court do make such other orders as it may deem just and expedient pending the hearing and determination of this Application.
 6. Spent
 7. That the costs of this application be in the cause.



2. The application is premised on grounds 1 to 11 set out on the face of the notice of motion the summary of which is that the respondents vide M/s Joyland Auctioneers have proclaimed property belonging to the applicant pursuant to a Decree passed on July 27, 2021.
3. That applicant has proposed to liquidate the decretal sum of Kshs 1,254,891 in three equal instalments of Kshs 418,279 until settlement in full.
4. That the attached properties are likely to be sold off at a undervalued rate vide a public auction.
5. It is in the interest of justice that the applicant be allowed to liquidate the amount accordingly.
6. The 1st respondent filed a replying affidavit sworn on the January 31, 2023 and says that although the auctioneers proclaimed the 1st applicant's property including motor vehicles registration numbers KCH 239 B, KCD 882 Y, KCH 234 B and office furniture, the auctioneers have seized only one of the properties mentioned above, that is; motor vehicle registration number KCH 239 B together with the assorted waste pipes which at the time of seizure were valued at Kshs 1.2 million. This amount is on the lower side whilst the decretal amount is Kshs 1,254,891.00. The allegation that the execution will collapse the company's daily operations is untrue because the applicant owns other property.
7. The 1st Respondent further deposes that sufficient cause has not been shown for the honourable court to exercise its discretion under order 12 (2) of the *Civil Procedure Rules, 2010* to allow a judgment debtor to pay the decretal sum in instalments. The applicants do not merit the grant of the orders for stay of execution and orders that they should satisfy the decree in instalments for want of proof that they are unable to pay the decretal sum in one lumpsum.
8. That the court allows the execution which is procedural and lawful to proceed as per the attachment.

Determination

9. A period of over six months has passed since this application was filed. The applicant had at the outset, even before the filing of this application offered to liquidate the decretal sum in three equal instalments of Kshs 418,297, and also had offered to provide postdated cheques at the time which offer was declined by the 1st respondent.
10. Considering the deposition and submission by both parties, this court deems it just and equitable for the applicants to liquidate the decretal sum plus the auctioneer charges in two equal instalments. The first instalment to be paid within seven (7) days of this ruling and the final instalment to be paid within 30 days from the date of the first instalment.
11. Accordingly, the court confirms the order for stay of execution of the judgment/decreed dated July 27, 2021 and lifts the proclamation by M/s Joyland Auctioneers upon payment of the costs of attachment by the applicants.
12. Each party to bear their own costs of this application.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 13TH DAY OF JULY, 2023.

MATHEWS N. NDUMA

JUDGE

Appearances

M/s Serah for Applicant

Dr. Musau for respondent



Ekale: Court clerk

