



REPUBLIC OF KENYA



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

**Apwaoka & 5 others v Borderless Tracking Limited (Cause 939 of 2016)
[2023] KEELRC 2356 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2356 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 939 OF 2016
AK NZEI, J
SEPTEMBER 29, 2023**

BETWEEN

**CHRIESTOM N. APWAOKA 1ST CLAIMANT
JUMA J. SIGIRIA 2ND CLAIMANT
MWANGANI KAMENE 3RD CLAIMANT
MARK M. MBITI 4TH CLAIMANT
ERIC ADHIAMBO OOKO 5TH CLAIMANT
ESAU OTIENO 6TH CLAIMANT**

AND

BORDERLESS TRACKING LIMITED RESPONDENT

RULING

1. Judgment in this suit was on September 29, 2022 delivered in favour of the Claimants against the Respondent. On March 16, 2023, the Respondent filed on urgent Notice of Motion dated March 15, 2013 seeking the following orders:-
 - a. that the application be certified urgent and service be dispensed with in the first instance.
 - b. that there be a stay of execution of the decree pending hearing and determination of the application.
 - c. that the Respondent be granted leave to liquidate the decretal sum by monthly instalments of Ksh 100,000 until satisfaction.
2. The application, expressed to be brought under Order 21 Rule 12, Order 9 Rules 9 & 11 and Order 22 Rules 1 of the *civil Procedure Rules* and Sections 1A,1B and 3A of the *Civil Procedure Act*, is premised



on a supporting affidavit of Doreen Wamanga Advocate, sworn on March 15, 2023. It is deponed in the said affidavit that although the Respondent/Applicant proposed to pay the Judgement sum by instalments of Kshs, 100,000 per month due to the prevailing economic hardships; the Claimant was keen on executing the Court's decree against the Responded/Judgment Debtor who was not in good financial health.

3. The application was opposed by the Claimant/Respondent vide a replying affidavit of Samuel Odhiambo Eliakim Advocate sworn on April 6, 2023. It is deponed in the said replying affidavit that the application is not brought in good faith as the Respondent had earlier proposed to pay the judgment sum by monthly instalments of kshs 200,000 but did not pay. It was further deponed on behalf of the Claimants that if the application herein is to be allowed, then the same should be allowed on condition that the Respondent/Applicant pays an initial instalment of Kshs 500,000.
4. When the application came up for hearing before me on April 17, 2023, Counsel for both parties appeared to maintain the foregoing respective positions. Counsel for the Respondent told the Court that the Respondent intended to liquidate the entire judgment sum by October 2023.
5. Although the Respondent/Applicant did not exhibit any copies of its audited accounts and/or bank statements to demonstrate that it has been going through financial hardships, I will not hold this against it as the Claimant has stated willingness to accept payment by instalments, different from those proposed by the Respondent.
6. In view of the foregoing scenario, I allow the Respondent's Notice of Motion dated March 15, 2023 in the following terms:-
 - a. the Respondent shall liquidate the decretal sum herein by instalments as follows:-
 - i. Ksh 300,000 within 14 days of this Ruling.
 - ii. the balance shall be paid by monthly instalments of ksh 150,000, payable with effect from November 2023, and thereafter on the 5th day of every subsequent month until payment in full.
 - iii. in default of any one instalment, execution shall issue for recovery of the entire balance due.
 - b. Each party will bear its own costs of the application.

7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH SEPTEMBER 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

..... for Claimant



..... Respondent

