



**Obonyo v Great Lakes University of Kisumu (Cause 376 of 2017)  
[2023] KEELRC 2995 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2995 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 376 OF 2017  
CN BAARI, J  
NOVEMBER 23, 2023**

**BETWEEN**

**TOM JOSEPH OBONYO ..... CLAIMANT**

**AND**

**GREAT LAKES UNIVERSITY OF KISUMU ..... RESPONDENT**

**RULING**

1. This ruling relates to the Respondent's motion application dated 12<sup>th</sup> October, 2023. The Respondent seeks orders that: -
  - i. Spent.
  - ii. Spent.
  - iii. Spent.
  - iv. This Honourable Court be pleased to grant leave to the Respondent/Applicant to settle the Decretal sum awarded to the Claimant/Respondent herein, being Kshs. 1,286,357.70 together with interests thereon in monthly instalments of Kshs.100, 000.00 (Kenya Shillings One Hundred Thousand Shillings only) payable on or before the 30<sup>th</sup> day of every month beginning the month of September 2022 until payment in full.
  - v. This Honourable Court be pleased to set aside and/or lift the warrants of attachment and sale issued on 5<sup>th</sup> June 2023.
  - vi. Cost of this application be provided for.
2. The Respondent/Applicant avers that pursuant to the judgment in the matter, the Claimant proceeded to instruct auctioneers and an order of sale issued. It is the Applicant's case that the



Auctioneers proceeded to attach the Applicant's Motor Vehicle Registration No. KBJ 276W, a Toyota Hilux Double Cabin, and which sale was to take place on 19<sup>th</sup> October, 2023.

3. The Applicant further avers that the sale did not take place owing to an interim order granted by this Court. It is their case that the Respondent/Applicant is a learning institution, and that it uses the motor vehicle to run the school and the intended sale will interfere with the normal running of the school.
4. It is the Applicant's assertion that it has since paid the Claimant/Decree holder a sum of Kshs. 550,000, and is unable to raise the remaining balance at once, and seeks to be allowed to pay Kshs. 100,000/- by 30<sup>th</sup> of every month starting 30<sup>th</sup> November, 2023, until payment in full.
5. It is the Applicant's case that it is currently facing financial difficulties due to numerous other judgments and does not raise more than Kshs. 3,000,000.00 a month. It further avers that it has produced a financial report on its financial position, which has continued to deteriorate since the Covid.19 pandemic that affected enrolment at the school.
6. It is their prayer that the warrants of attachment be set aside and it be allowed to pay the remainder of the decretal sum in instalments.
7. The Claimant/Respondent did not oppose the application, and did not attend Court for the hearing despite service.
8. Counsel for the Respondent/Applicant urged the motion on 31<sup>st</sup> October, 2023, reiterating the Applicants pleadings.

#### **Analysis and Determination**

9. Upon careful consideration of the motion, the grounds and affidavit in support and the oral submissions by Counsel for the Applicant, the issue for determination is whether the Applicant/Respondent deserves the orders sought.
10. 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 in 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.”

11. An order to settle a decretal sum in instalments, is a discretion power of the Court which must be exercised judiciously. In *Rajabali Alidina v Remtulla Alidina & Another* [1961] EA 565 quoted in *Nicholas Gitonga Murongi v 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.
12. In the case of *KTK Advocates v Baringo County Government* [2018] eKLR, the Court held that whether or not to allow a party to settle a decree by instalment, is a matter of exercise of discretion, and the Court must be satisfied that the Applicant deserves exercise of that discretion.
13. The Court equally addressed the issue in the case of *Diamond Star General Trading LLC v Ambrose D O Rachier carrying on business as Rachier & Amollo Advocates* [2018] eKLR where it held thus: -
- ‘However, the Applicant other than alleging inability to pay, has not demonstrated his financial position to enable the Court ascertain the reasonable amount that he can pay. It is trite law that unless there are good, sufficient and adequate reasons, a judgment debtor should be allowed to enjoy the fruits of the judgment. Therefore, as much as the Court will consider circumstances under which this debt was incurred, the Court will also have to consider the right of the judgment creditor to prompt payment.’
14. The Applicant herein, has submitted its financial report in evidence, and which report has not been controverted. Further, the Applicant has equally shown that it has already paid half the decretal sum to the Claimant/decreed holder in the sum of Kshs. 550,000/-
15. In my view, the conduct of the Applicant and its financial position, justifies the grant of the orders sought. In the premise I make orders as follows: -
- a. That the Respondent/Applicant is allowed to settle the Decretal sum awarded to the Claimant/Respondent herein, being Kshs. 1,286,357.70 together with interests thereon in monthly instalments of Kshs.100,000.00 (Kenya Shillings One Hundred Thousand Shillings only) payable on or before the 30<sup>th</sup> day of every month from November, 2023 until payment in full, and in default execution to issue.
  - b. That the warrants of attachment and sale issued on 5<sup>th</sup> June 2023, be and are hereby set aside and/or lifted.
  - c. That Ms. Heath Auctioneers be and are hereby ordered to unconditionally release the Respondent’s motor vehicle registration number KBJ 276W Toyota Hilux Double Cabin to the Respondent/Applicant.
  - d. That the Auctioneers fees shall be borne by the Applicant/Respondent.
  - e. The Claimant/Respondent did not oppose the application; hence I make no orders on costs
16. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2023.**

**C. N. BAARI**

**JUDGE**

Appearance:

N/A for the Claimant/Respondent

Ms. Chuchu h/b for Ms. Oduor for the Respondent/Applicant

