



**Muhenge v Mariakani Cottage Hospital Limited (Cause E175 of 2022)
[2023] KEELRC 2725 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2725 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E175 OF 2022
L NDOLO, J
NOVEMBER 2, 2023**

BETWEEN

ROSEBELLA MUHENGE CLAIMANT

AND

MARIAKANI COTTAGE HOSPITAL LIMITED RESPONDENT

RULING

1. By its Notice of Motion dated 11th May 2023, the Respondent seeks the following orders:
 - a. Stay of execution of the judgment entered on admission and the decree of the Court dated 27th April 2023;
 - b. An order directing the taking of accounts to the extent of Kshs. 330,000 that had been paid to the Claimant in offsetting the salary arrears prior to the entry of judgment on admission;
 - c. An order allowing the Respondent to settle the balance due together with costs and interest in monthly instalments of Kshs. 30,000 until payment in full;
2. The application is supported by an affidavit sworn by the Respondent's Director, Rose Kyaterekera and is based on the following grounds:
 - a. The Claimant has applied for warrants of attachment and is intending to execute the decree by way of auctioning the Respondent's property;
 - b. The Respondent is likely to suffer irreparable loss and damage if the orders sought are not granted;
 - c. The Respondent had, prior to the entry of judgment, paid a sum of Kshs. 330,000 to the Claimant, which amount was not factored in the judgment;



- d. The execution of the judgment sum as contained in the decree would be effected without taking into account this amount, thus prejudicing the Respondent;
 - e. If the Court allows the application, the Respondent is ready to pay the balance in monthly instalments of Kshs. 30,000;
 - f. This proposal is informed by the harsh economic times that the Country is going through, which has severely affected the Respondent's cash flow;
 - g. It would be just and mete if the orders sought were granted.
3. The Claimant opposes the application by her replying affidavit sworn on 22nd May 2023.
 4. The Claimant terms the application as a deliberate attempt by the Respondent to keep her from reaping the fruits of her judgment.
 5. Regarding the Respondent's averment that part of the judgment sum had been paid, the Claimant depones that she has only received Kshs. 220,000 which was paid to NCBA Bank (Kshs. 180,000) and Gulf Bank (Kshs. 40,000).
 6. The Claimant challenges the correctness of the statement of account filed by the Respondent, which according to her, has deliberately omitted her salary from November to May 2022 when her services were terminated;
 7. The Claimant states that the amount of Kshs. 220,000 paid to her could not have been part of the judgment sum as the judgment was entered on 27th April 2023, while the payment was made almost a year before;
 8. The Claimant rejects the Respondent's proposal to settle the outstanding debt in instalments, which according to her, has not been made in good faith.
 9. Kyaterekera filed a further affidavit sworn on 30th May 2023. She depones that the Respondent had made the following payments to the Claimant:
 - a. Cheque Number 000067 for Kshs. paid to the Claimant on 21st January 2022;
 - b. Cheque Number 009034 for Kshs. 20,000 paid to the Claimant on 9th February 2022;
 - c. Equity Bank Account Transfer of Kshs. 15,000 to Rosebella Muhenge on 4th July 2022;
 - d. Cheque Number 959 for Kshs. 20,000 paid to the Claimant on 1st April 2022;
 - e. Cheque Number 966 for Kshs. 25,000 paid to the Claimant on 1st April 2022;
 - f. Cheque Number 1120 for Kshs. 180,000 paid to the Claimant on 6th April 2022;
 - g. Cheque Number 001129 for Kshs. 20,000 paid to the Claimant on 9th May 2022.
 10. In addition, Kyaterekera seeks to produce M-Pesa Statements from 18th May 2022 to 18th May 2023 for two numbers registered in the name of Christopher BN Were, being xxxx and xxxx by which the Claimant received money totalling Kshs. 559,908.
 11. Kyaterekera depones that Christopher BN Ntalo Were is a co-director of the Respondent and the money captured in the M-Pesa Statements was sent by him in his capacity as a Director and in cognisance and satisfaction of the Claimant's overdue salary arrears owed by the Respondent Hospital.



12. According to Kyaterekera, the Respondent has been trying to make good its commitment to the Claimant, even after the filing of the suit and as late as March 2023.
13. Kyaterekera terms the Claimant's averment that the amounts already paid cannot be part of the judgment sum because the judgment was entered on 27th April 2023 as absurd, since the filing of the application for judgment on admission and the entry of judgment does not change the fact that money was sent by the Respondent and received by the Claimant.
14. In response, the Claimant filed an affidavit sworn by Dr. C.B. Ntalo Were on 21st June 2023 and her own supplementary affidavit sworn on 27th June 2023. By these affidavits, the Claimant challenges the M-Pesa Statements filed by the Respondent as evidence of payments made to her By Ntalo Were in his capacity as a Director of the Respondent.
15. In his affidavit sworn on 21st June 2023, Ntalo Were objects to production of the M-Pesa Statements, which he claims were obtained illegally, without his consent.
16. Ntalo Were depones that any payments made to the Claimant from his M-Pesa account, were made by him personally and for a totally different purpose and not in payment of the Claimant's salary or other legal dues.
17. The Claimant accuses the Respondent of seeking to review the judgment entered on admission, through the back door.
18. The primary prayer in this application is an order for taking of accounts with a view to determining the actual amount owed to the Claimant by the Respondent. This arises from divergent positions taken by the parties regarding the amount already paid on account of accrued salary arrears.
19. The Claimant is opposed to the taking of accounts, on the ground that she has already secured a judgment on admission. She however does not deny having received some money from the Respondent on account of salary arrears.
20. Even where judgment has been entered on admission, the Court must entertain an argument by the judgment debtor that part of the judgment has in fact been settled. That being the case, I see no prejudice to be suffered by any party if accounts are taken.
21. I therefore direct the parties to take accounts and file a joint statement in court within the next fourteen (14) days from the date of this ruling.
22. I will withhold my verdict on the Respondent's plea to settle the outstanding sum in instalments pending compliance with the directions on taking of accounts.
23. The interim orders granted on 16th May 2023 will remain in force until final determination of this application.
24. The costs of the application will be in the cause.
25. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF NOVEMBER, 2023.

LINNET NDOLO

JUDGE

Appearance:

Ms. Wangui for the Claimant



Mr. Kabuchu for the Respondent

