



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.251 OF 2018

(Before D.K.N.Marete)

KAMUGA/GAICHANJIRU FCS LIMITED.....CLAIMANT

VERSUS

KENYA UNION OF COMMERCIAL, FOOD

AND ALLIED WORKERS.....RESPONDENT

R U L I N G

This is an application by way of Notice of Motion dated 25th May, 2021 and comes out as follows;

- a) Service of this application be dispensed with at the hearing of the first instance and this application be certified as urgent.*
- b) There be a stay of execution till this application is heard and determined.*
- c) The judgment creditor be allowed a grace period of five years to satisfy the decree.*
- d) The claimant be permanently restrained from attaching the respondent goods of trade.*
- e) Any other orders this honourable court may deem fit to grant.*

It is based on the following grounds;

- 1. The claimant has attached the respondent's goods of trade which exempted by the law from attachment.*
- 2. That if execution proceeds the respondent operations shall be totally incapacitated.*
- 3. That the respondent cannot satisfy the amount claimed in lump sum and is seeking a time frame of at least five years to settle.*
- 4. The respondent shall suffer irreparable loss if application is not granted and attached goods serve a large community.*

The Respondent tabulates his case as follows;

- That the judgment the subject matter of this application was delivered on 25th November, 2019.
- That upon receipt of judgment she sought a meeting with the claimant to discuss mode of payment.
- That this was agreed to be paid in three instalments with effect from 30th November, 2021.
- That on agreement, the Applicants counsel refused to sign the consent.
- That the applicant went ahead to apply for a decree whereupon the Respondent/claimant realised that it was erroneously added.

- That the Respondent/Claimant successfully filed an application for review.
- That 6 years down the line, nothing has been paid.
- There is no indication of willingness to meet the decretal sum.
- That this is dishonesty and a delaying tactic.
- There is no evidence of inability to pay, or at all.
- That this application is misplaced, bad in law and calls for dismissal.

They pray that this payment be spread over a period of five years.

The Respondent in her written submission dated 9th July, 2021 reiterate their case against the application.

I find the application in favour of the Claimant/Respondent. This is supported by the Applicant's conduct in the matter which speaks volumes of her reluctance to walk straight through this transaction.

It is the Claimant/Respondents submission that the Respondent/Applicant is being dishonest and this application is a delay tactic intended to buy time to the detriment of the grievant. She has not in any event tendered any evidence of disability to pay so as to warrant a spread of the payment of the decretal sums.

The application tilts in favour of the Claimant/Respondent. The judgment of this court was made three (3) years down the line. The grievant continues to suffer the indignity and injustice of not having been paid their terminal dues. Their fruits of judgement hang in the air for no good reason.

I am therefore inclined to dismiss the application and order relief as hereunder;

- i) That the decretal amount of Kshs.5,442,449.85 be paid within a period of 60 days.
- ii) That each party shall bear their costs of this application.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF MARCH, 2022.

D.K.NJAGI MARETE

JUDGE

APPEARANCES

1. MISS MACHARIA FOR THE CLAIMANT UNION/RESPONDENT.

2. MR.KIMWERE INSTRUCTED BY KIMWERE JOSPHAT & COMPANY ADVOCATES FOR THE RESPONDENT/APPLICANT