



**Mwai v Amboseli Institute of Hospitality And Technology (Cause
1580 of 2017) [2022] KEELRC 4012 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4012 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1580 OF 2017
J RIKA, J
SEPTEMBER 29, 2022**

BETWEEN

JAMES MAINA MWAI CLAIMANT

AND

**AMBOSELI INSTITUTE OF HOSPITALITY AND
TECHNOLOGY RESPONDENT**

RULING

1. The claimant was awarded compensation for unfair termination at Kshs 636,000 among other awards, in a Judgment delivered on March 16, 2022.
2. The respondent filed an application dated May 18, 2022, asking the court to stay execution of judgment, and allow the respondent to pay the decretal amount in three equal instalments.
3. The respondent states it sent out to the claimant two post-dated cheques dated July 15, 2022 and October 15, 2022, as the first two instalments. It is explained in the founding affidavit of Director Hellen Kibe, that the respondent is a tertiary institution, and its income is pegged on student intake in the months of January, June and September. It is proposed to pay the last cheque on January 15, 2023.
4. The claimant is opposed to the application through his affidavit, sworn on June 3, 2022. He states that the application is frivolous and vexatious. The court cannot stay execution without any cause. Judgment has not been appealed or reviewed. The claim was filed way back in 2017. The respondent is capable of liquidating the decretal sum in lump sum. Grant of the orders sought would prolong settlement.
5. It was agreed that the application is considered on the strength of parties' affidavits and submissions on record.



The Court Finds: -

6. The respondent has not demonstrated its inability to pay the decretal sum in lump sum.
7. Judgment was delivered in March 2022, and if the respondent genuinely wished to liquidate the amount in instalments, there should have been about 6 months to September 2022, when substantial amount should have been paid through instalments.
8. It is noted that the cause was filed in 2017.
9. The court has considered that the respondent issued post-dated cheques to the claimant, one which ought to have been paid by July 15, 2022. Assuming payment has gone through, the court shall bend backwards and allow the respondent to pay the decretal amount as follows: -
 - a. 1st cheque for the sum of Kshs 220,000, [presumably] paid on July 15, 2022.
 - b. The last payment in the sum of Kshs 416,000 to be paid on or before October 15, 2022.
 - c. In default execution to go on.

It is so ordered.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH
DAY OF SEPTEMBER 2022.**

JAMES RIKA

JUDGE

