



Kenya Union of Commercial, Food and Allied Workers v Murang'a Farmers Cooperative Union Limited (Cause E004 of 2021) [2022] KEELRC 3910 (KLR) (16 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 3910 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E004 OF 2021
DKN MARETE, J
SEPTEMBER 16, 2022**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
MURANG'A FARMERS COOPERATIVE UNION LIMITED RESPONDENT

RULING

1. This is an application dated April 25, 2022 and craves for the following orders of court;
 1. That this application be certified urgent and service be dispensed with in the first instance and the application be heard *ex parte*.
 2. That this honourable court be pleased to grant leave to the firm of Messrs Chege Kibathi & Co Advocates LLP to come on record on behalf of the respondent/applicant.
 3. That this honourable court be pleased to issue a stay of execution of the judgment dated March 9, 2022 together with any consequential orders pending the inter partes hearing of this application.
 4. That this honourable court be pleased to order that the decretal amount of Kshs 4,874,394.88 owed to the 1st grievant one Bernard Kungu Maina be settled within a period of 6 years by way of equal monthly instalments of Kshs 67,699.93 beginning from the month of June, 2022 until payment in full.
 5. That this honourable court be pleased to order that the decretal amount of Kshs 4,543,331.54 owed to the 2nd grievant one Ndung'u Joseph Kangethe be settled within a period of 6 years by way of equal monthly instalments of Kshs 63,101.83 beginning from the month of June, 2022 until payment in full.



6. That the costs of this application be in the cause.
2. It is grounded as follows;
 - a) The honourable court rendered its judgment on this matter on March 9, 2022 to the effect that the respondent/applicant does pay Kshs 4,874,394.88 and Kshs 4,534,331.54 plus interest and costs to Bernard Kungu Maina and Ndungu Joseph Kangethe being the 1st and 2nd grievant respectively.
 - b) The amounts mentioned in the preceding paragraph be met within a period of 60 days to mean on or before the May 9, 2022.
 - c) Whereas the respondent/applicant acknowledges its obligation to pay the colossal amounts due, it is facing financial constraints hence it is unable to comply with this honourable court's orders on making the full payment on or before May 9, 2022. Therefore, the respondent/applicant seeks to be allowed to make the payment by way of equal monthly instalments as outlined at prayers 4 and 5 of the application.
 - d) The applicant urges this honourable court to consider the respondent/applicant's financial statements annexed to the application as evidence of its dire financial situation in reaching a just determination in this matter.
 - e) This application has been filed without inordinate delay and in utmost good faith in acknowledgment that the grievants are entitled to enjoy the fruits of their judgment. The applicant believes that the proposed sums are reasonable for which the applicant shall be able to afford while meeting its other financial obligations.
 - f) If the application is not heard expediently and orders of stay of execution issued, the respondent/applicant will suffer tremendous loss and damages and the application shall be defeated and/or decimated.
 - g) The application is highly merited and it is in the interest of justice that the same be granted.
 3. The respondent/claimant in her grounds of opposition dated May 9, 2022 oppose the application.
 4. It is her case that all this time, the applicant/respondent has promised to meet the decretal amounts in six years but to no avail. She was not paid a farthing to the grievants. this is even at conciliation stage where she declined to make a proposal for payment.
 5. The respondent/claimant further submits that this application is intended to delay execution coming only two weeks to the appointed timeline for payment. In the meantime the grievants continue to suffer anguish since January, 2020 when they left employment.
 6. The claimant/respondent further submits that the respondent /applicant is a person of means and the application is a tactic in evading that which is duly owed to the grievants.
 7. This application can only be decided on the premises of a balance of probabilities and preponderance of evidence. The respondent /applicant has not demonstrably established a case for stay of execution. The claimant/respondent has demonstrated a case of the respondent reluctance and dalliance at meeting her part of the bargain in this cause.
 8. The claimant/respondent ably presents a case of refusal and reluctance by the respondent/applicant in meeting the decree. This has all along been the case and was even demonstrated at conciliation where the applicant was reluctant to make any offer. This is unkind and contrary to expediently labour



relations exercises. The applicant has not in any way demonstrated a case of inability to pay but only alleges the same.

9. The claimant/respondent's case overwhelms that of the applicant. This is on the basis of the preponderance of evidence as adduced by the parties. The application therefore tilts in her favour.
10. I am therefore inclined to partially dismiss the application and order and follows;
 - i. That the firm of Messrs Chege Kibathi & Co Advocates LLP does come on record on behalf of the respondent/applicant.
 - ii. That the application for stay of execution be and is hereby disallowed.
 - iii. That the cost of this application shall be borne by the respondent/applicant.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF SEPTEMBER 2022.

D.K. Njagi Marete

JUDGE

Appearances

1. Mr. Mwangi instructed by Mr. Chege Kibathi & Co. Advocates for the Respondent/Applicant
2. Miss Macharia for the Claimant/Respondent Union.

