



**Okeyo v Great Lakes University of Kisumu (Cause 387 of 2016)
[2022] KEELRC 13155 (KLR) (9 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13155 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 387 OF 2016
S RADIDO, J
NOVEMBER 9, 2022**

BETWEEN

STEPHEN OKEYO CLAIMANT

AND

GREAT LAKES UNIVERSITY OF KISUMU RESPONDENT

RULING

1. On 14 April 2021, the court entered judgment for the claimant in the sum of Kshs 13,943,612/- together with interest and costs.
2. On 30 June 2022, the respondent filed a motion seeking orders:
 - (1) ...
 - (2) ...
 - (3) That 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 13,943,612/- together with interest thereon in monthly instalments of Kshs 300,000 (Kenya shillings Three Hundred Thousand) payable on or before the 30th of every month beginning the month of September 2022 until payment in full.
 - (4) That as a consequence of order No. 3 above, this Honourable Court be pleased to set aside the warrants of attachment and sale issued on 14.06.2022 and lifting the proclamation notice issued by m/s Eshikoni Auctioneers on 24.06.2022.
 - (5) That costs of this application be provided for.
3. The grounds in support of the Motion were that the Court had discretion under order 21 rule 12 of the *Civil Procedure Rules* to order settlement of a decree in instalments, the claimant had moved



- to execute the decree, the respondent, an educational institution under new management since 2020 was willing and ready to settle the decretal sum save that it was experiencing financial difficulties, the respondent had other liabilities arising from judgments of court and that was the execution to proceed to conclusion, it would suffer a substantial loss.
4. The respondent filed a copy of its financial statements up to November 2020 to support the contention that its financial status was not good.
 5. The claimant filed a replying affidavit in opposition to the Motion on 14 July 2022 wherein it was deponed that liability was not denied, the respondent had failed to meet a condition set by the court on 28 June 2022, to deposit half the decretal amount in court, there had been no demonstration of a willingness to settle the decretal sum 14 months after judgment, the respondent had not in good faith participated in negotiations to settle the debt, the respondent had not disclosed its current financial statements and that if the court were to concede to the application, half of the decretal sum ought to be paid.
 6. The claimant filed a further affidavit on 12 September 2022 where he swore that his son had failed to take up a study opportunity in Denmark because of lack of funds. He also deponed that the Kenya Revenue Authority had sent him a tax demand and that he had other outstanding loans.
 7. Pursuant to directions issued on 19 September 2022, the respondent filed its submissions on 21 September 2022 (the claimant indicated that he would not file submissions).
 8. The court has considered the motion, affidavits, and submissions.
 9. The court has the discretion to grant the orders sought. Being a judicial discretion, it must be exercised within the bounds of reason and rationality.
 10. It is not in issue that the Respondent is an educational institution. According to the financial statement up to November 2020, the financial outlook of the University was not rosy.
 11. But the Court is disturbed that the University was unable to present a more current financial statement and that it did not participate in good faith in negotiations to agree on modes of settling the decretal sum.
 12. On the other side of the spectrum, the claimant has a judgment which has not been appealed. He is entitled to enjoy the fruits of the judgment without being bogged down with further court battles on the decree.
 13. In consideration of the above, the court allows the motion by granting an order staying (not setting aside or lifting) the warrants of sale on the following terms:
 - i. The respondent to pay the claimant Kshs 4,000,000/- on or before 30 November 2022.
 - ii. The respondent settles the balance of the decretal sum in equal monthly instalments of Kshs 300,000/- commencing 30 December 2022.
 - iii. In default, execution to proceed.
 14. The court grants the parties the liberty to negotiate other settlement modes as circumstances allow.
 15. The claimant to have costs of the motion.

DELIVERED VIRTUALLY FROM MALINDI, DATED AND SIGNED ON THIS 9TH DAY OF NOVEMBER 2022.



RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Mr Washika instructed by Wafula, Washika & Associates Advocates

For Respondent Ms Onyango instructed by Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura

