



**Chimbagu v A Niaz & Sons Limited (Cause 630 of 2016)  
[2022] KEELRC 13482 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13482 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 630 OF 2016  
AK NZEI, J  
DECEMBER 8, 2022**

**BETWEEN**

**BAKARI BOKI CHIMBAGU ..... CLAIMANT**

**AND**

**A NIAZ & SONS LIMITED ..... RESPONDENT**

*(Judgement in the suit herein was delivered on June 9, 2022 whereby the claimant/respondent was awarded Ksh 630,006, costs of the suit and interest at court rates. The court’s record shows that the awarded costs are yet to be taxed. A decree is shown to have issued on July 26, 2022.)*

**RULING**

1. Judgement in the suit herein was delivered on June 9, 2022 whereby the claimant/respondent was awarded Ksh 630,006, costs of the suit and interest at court rates. The court’s record shows that the awarded costs are yet to be taxed. A decree is shown to have issued on July 26, 2022.
2. On August 17, 2022, the respondent filed a notice of motion evenly dated seeking orders:-
  - a. That execution of the court’s judgment dated June 9, 2022 be stayed pending inter-partes hearing and determination of the application.
  - b. That the court be pleased to allow the respondent/applicant to satisfy the decretal sum by monthly instalments of Ksh 25,000 till payment in full.
  - c. That costs of the application be provided for.
3. The application is predicated on a supporting affidavit of Arshad Al-Haq Niaz, the respondent’s sole director, sworn on August 16, 2022, and a supplementary affidavit sworn on October 6, 2022. It is deponed in the said supporting affidavit that although the respondent/applicant is desirous of liquidating the decretal sum, it is currently unable to do so due to the harsh economic environment



since 2018, complicated further by the effects of Covid-19 pandemic which made the respondent/applicant's revenue from construction business to dwindle.

4. It is further deponed on behalf of the respondent/applicant that its proposal to the claimant/respondent to settle the decretal sum by instalments had been met with insistence on full settlement. Copies of the respondent's audited accounts for the year ended December 31, 2017 and KRA tax filing details for the years 2017, 2018, 2019, 2020 and 2021 were annexed to the supporting affidavit.
5. The application was filed under a certificate of urgency and I on August 23, 2022 certified the same as urgent, stayed execution in the interim and ordered the respondent/applicant to pay a sum of Ksh 150,000 to the claimant/respondent within fourteen days of the said order. It is deponed and demonstrated in the respondent/applicant's supplementary affidavit that the said order was complied with on September 5, 2022. A copy of the respondent/applicant's bank statement on its account held with First Community Bank for the period October 2018 to October 2019 is also annexed to that affidavit.
6. The application is opposed by the claimant/respondent vide a replying affidavit sworn on October 4, 2022, whereby it is deponed that no material has been placed before this court to show that the respondent/applicant company is running at a loss, and is therefore unable to pay its debts.
7. Both parties filed written submissions on the application pursuant to the court's directions in that regard, which I have considered.
8. I have noted that the respondent/applicant has not exhibited its bank statements for the years 2020, 2021, and 2022, and that its financial status during the said period has not been made clear to this court. It should, however, be noted that execution of a court's decree is a lawful process undertaken by a successful litigant. Such a litigant should never be kept away from his money, except for a good reason.
9. In the present case, the respondent/applicant has not demonstrated inability to pay the balance of the decretal sum at one go. As already stated, the respondent/applicant's current financial status has not been disclosed. Its asset base has also not been disclosed. The respondent must pay the decretal sum or whatever part of it remains unpaid to date.
10. I find no merit in the notice of motion dated August 17, 2022. The same is hereby dismissed with costs, and the interim stay of execution ordered on August 23, 2022 is hereby vacated.
11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 8TH DAY OF DECEMBER 2022**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

N/A for claimant



Miss Sidinyu respondent

