



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 2 OF 2019

ALBERT AKI MALONGO.....CLAIMANT

V

CHEMELIL SUGAR CO LTD....RESPONDENT

RULING NO. 2

1. The Court delivered a Ruling on 13 February 2020 in which judgment was entered in favour of the Claimant on admission for unpaid salaries, pay in lieu of notice and gratuity totalling Kshs 3,935,354/-.
2. The Claimant was also awarded costs and interest.
3. The Court further ordered that disputed Issues go to trial.
4. On 3 September 2020, the Respondent forwarded 2 cheques worth Kshs 1,400,000/- to the Claimant's advocate on record.
5. The Claimant moved to execute for the balance, and on 10 September 2020, auctioneers moved to proclaim the Respondent's properties.
6. Alarmed with the turn of events, the Respondent filed a motion under a certificate of urgency on 15 September 2020, seeking orders:
 1. ...
 2. THAT pending the hearing and determination of this application, this Court be pleased to issue an order of stay of execution of the decree herein.
 3. THAT this Honourable Court be pleased to grant the Respondent leave to settle the decretal sum by monthly instalment of Kshs 250,000/-
7. When the Motion was placed before the Court on 16 September 2020, it certified it urgent and also issued an order in terms as proposed in prayer 2.
8. The Court also directed the filing and exchange of affidavits and submissions.
9. The Claimant filed a replying affidavit in opposition to the Motion on 28 September 2020.
10. The Respondent filed its submissions on 3 November 2020, while the Claimant filed his submissions on 14 January 2021.
11. On 4 November 2020, the Court requested the parties to attempt an out of court settlement.
12. When the parties returned to Court on 19 November 2020, the Court was informed that an agreement had not been reached.
13. The Respondent had proposed to settle the admitted amount by payment of Kshs 500,000/- before the end of 20 November 2020 and the balance in equal monthly instalments of Kshs 200,000/- or in the alternative payment of Kshs 300,000/- every month.
14. The Respondent asserted in giving its proposals and in support of the application that it was facing financial difficulties.

15. The Claimant, on his part, had proposed that the decretal sum be paid in 7 equal monthly instalments on the basis that there was a likelihood of the Respondent changing hands, and therefore it would be uncertain whether the new owners would accept liability.

16. Order 21 Rule 12 of the Civil Procedure Rules empowers a Court to allow settling of a money decree in instalments, where sufficient cause has been shown. The power is discretionary.

17. As any other discretionary power granted to the Court, the Court is called upon to act judiciously and not in an arbitrary manner (see *Rajabail v Ramtulla Alidina & Ar* (1961) E.A. 565).

18. The Respondent's main reason for seeking the order under consideration was financial difficulties. It is in the public domain and worth taking judicial notice that public/government-owned sugar factories have been under immense financial pressure, and that was one of the considerations prompting the government to work out a privatisation programme.

19. The Claimant acknowledged that position but still opposed the Motion because of uncertainties surrounding the privatisation.

20. The parties had more or less reached an agreement on how to settle the decretal amount. The Claimant wanted the pending decretal sum settled in 7 monthly instalments. The proposal by the Respondent would require about 11 months.

21. Under the circumstances and having put to mind the proposals by the parties, the Court is of the view that 9 months to settle the outstanding amount would be fair and appropriate.

Conclusion and Orders

22. From the foregoing, the Court allows the Motion in the following terms:

(a) THAT this Honourable Court orders the Respondent to settle the outstanding decretal sum by 9 equal monthly instalments commencing 1 March 2021.

23. Claimant to have costs of the Motion.

Delivered through Microsoft teams, dated and signed in Kisumu on this 24th day of February 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Anan & Associates Co. Advocates

For Respondent Otieno, Yogo, Ojuro & Co. Advocates

Court Assistant Chrispo Aura