



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**

**CAUSE NO.2132 OF 2015**

**ANASTASIA NDILEVE MASOA..... CLAIMANT**

**VERSUS**

**DM ENTERPRISES LIMITED ..... RESPONDENT**

**RULING**

The respondent, DM Enterprises Limited filed application dated 22<sup>nd</sup> February, 2021 seeking stay of execution of the decree passed on 14<sup>th</sup> May, 2019 and that they be allowed to liquidate the decretal sum in 8 equal instalments.

The application is supported by the annexed affidavit of Francis Kabiki Musamula and on the grounds that the respondent has instructed new advocates after the previous advocates failed to inform them of the judgement and progress in the matter and only became aware when auctioneers proclaimed its assets. There is no intention to file appeal against the judgement and the intention is to settle the judgement albeit in instalments.

The proposal is to make payments in 8 equal instalments.

The attached vehicles KBP 390Y and KBV 070W do not belong to the respondent and the same are charged to I & M Bank and Prime Bank respectively. The rest of the items in the office attached are used in the ordinary course of business of the respondent and if the orders sought are not issued these assets will be moved for sale and the respondent shall suffer irreparable loss and damage while there is offer to settle the decretal sum in instalments.

Mr Musamula avers in his affidavit that the respondent is willing to settle the decretal sum in 8 equal instalments and seek stay of execution in this regard so as to settle the judgement.

In reply, the claimant filed the Replying Affidavit of Isaiah Kubai advocate for the claimant and who avers that he has been in conduct of this matter which was filed and summons issued to the respondent on 14<sup>th</sup> December, 2015 and there was appearance and defence filed. The matter proceeded with the full knowledge of the respondent and there are returns to confirm service.

Counsel for the claimant also avers that judgement was delivered on 14<sup>th</sup> May, 2019 and the respondent was served. The matter went for taxation and the respondent was served. On 15<sup>th</sup> December, 2020 the respondent appointed new advocates who initiated communication seeking to settle the matter but there was no offer and forcing the claimant to proceed with execution as there is a valid judgement. The respondent is not acting in good faith but in abuse of the court process by wasting court time to frustrate the claimant from enjoying the fruits of the judgement. The offer to liquidate the decretal sum in 8 instalments is not sincere since on 5<sup>th</sup> March, 2021 a cheque of Ksh.40, 000 was forwarded meaning such payment would result in 16 instalments and not 8 as proposed.

Counsel for the claimant also avers that there is no proof that the respondent is not able to pay the entire decretal sum as no financial statement has been filed. To preserve the judgement of the court the orders sought should not issue and application be dismissed with costs.

**Determination**

The instant application is made post judgement delivered on 14<sup>th</sup> May, 2019.

Execution process is in motion and the respondent has appointed new advocates vide Notice of Appointment dated 17<sup>th</sup> February, 2021. Part of the orders sought in the Notice of Motion includes leave by the new firm of Advocates to come on record as advocates for the respondent.

This matter was not addressed by either party.

The sole reason for the motion is that the respondent wishes to settle the matter since there is no intention to file an appeal after the previous advocates failed to inform them of the judgement of the court in time. Save, the offer to pay by 8 equal instalments is not actualised with any payment. The claimant in reply asserts that a cheque of Ksh.40, 000 was forwarded but such translates to 16 instalments where such was to apply.

Payment of decretal sums in instalments is based on the courts discretion upon circumstances of the applicant and Order 21 rule 12 Civil Procedure Rules allows the court to order instalment Payments with or without consent of the decree holder. The court has to be satisfied of three conditions to allow payment in instalments;

- 1. Whether the applicant has shown sufficient reason as to why it should pay in instalments.**
- 2. Whether the application was made in good faith and the monthly instalments are reasonable.**
- 3. Whether the applicant has shown bona fides by arranging fair payments in instalments.**

Has the respondent met these basis conditions?

There is a valid judgement on record. The claimant should not be denied the enjoyment of the fruits of the same for the sole reason that the respondent was not informed of the judgement by his advocates in good time and now does not wish to file an appeal. This cannot be a sufficient reason to stall execution of the judgement.

The offer made now rejected and the respondent having made no details as to why the 8 instalments should apply, in the interests of justice and taking into account the respondent was made aware of the judgement immediately it was delivered, the decretal sum due should be paid.

Is the offer to pay in instalments *bona fides*? As set out above, the offer to pay in 8 equal instalments is not actualised as the respondent has only made effort to pay Ksh.40, 000. The total decretal sum from the judgement sum and before taxation is ksh.503, 686 and which translates to 8 instalments of Ksh.62, 960.75. With additional costs, this would be higher. To offer Ksh.40, 000 is a negation of the same and an abuse of the very orders sought.

**Accordingly, application dated 22<sup>nd</sup> February, 2021 is found without merit and in abuse of court process and is hereby dismissed with costs to the claimant.**

**Delivered at Nairobi this 13<sup>th</sup> April, 2021.**

**M. MBARU**

**JUDGE**

In the presence of: .....