



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.2460 OF 2016

BERTHA AWUOR KOWIDO.....CLAIMANT

VERSUS

SPEED CAPITAL LIMITED.....RESPONDENT

RULING

The respondent, Speed Capital Limited filed application dated 1st February, 2021 under the provisions of Order 21 Rule 12, Order 22 Rule 22 and Order 51 Rule 1 of the Civil Procedure Rules and section 63(e) , 1A, 1B, 3 and 3A of the Civil Procedure Act and seeking for orders that;

- a) There be stay of execution of the judgement and decree entered by this court on the 17th December, 2020 as against the applicant for a total sum of Ksh.1, 030,161.00 being the decretal sum, interests and costs and or all consequential orders arising therefrom.*
- b) The court be pleased to order that the applicant pays the decretal amount of Ksh.1, 030,161.00 in monthly instalments of Ksh.50, 000/- every month with effect from 5th February, 2021 until payment in full.*
- c) The applicant be at liberty to seek such other orders from this court as may be deemed just and reasonable.*
- d) Costs be provided for.*

The application is supported by the affidavit of James Karebe and on the grounds that judgement herein was delivered in favour of the claimant on 25th October, 2019, the bill of costs was taxed vide ruling on 10th November, 2020. The claimant has embarked on execution save the respondent company is unable to settle the decretal sum of ksh.1,030,161 due to financial constraints occasioned by Covid-19 pandemic.

In his supporting affidavit, James Karebe avers that he is the chief operating officer of the respondent and upon proclamation of the respondents moveable goods and to seek the sale of such properties the respondent seeks the court to be allowed to pay the decretal sum in Ksh.50, 000 equal instalments as otherwise the entire business shall come to a standstill. Due to the economic situation following the Covid-19 pandemic the constraints have affected business performance and the respondent is not able to pay the full decretal sum and to allow the claimant enjoy his lawful judgement.

In reply, the claimant filed a Replying Affidavit and avers that judgement herein was delivered on 25th October, 2019 and which was brought to the attention of the respondent who failed to pay leading to taxation of costs and which was taxed and the decree served upon the respondent and still failed to pay after participating in the taxation process.

The claimant also avers that the matter was mentioned on 13th October, 2020 and the respondent failed to pay.

The total decretal sum is Ksh.1, 030,161 and the offer to pay in instalments of ksh.50, 000 per month is unreasonable meaning if allowed the same shall be settled by November, 2022. This will be prejudicial and detrimental to the claimant's rights.

The respondent is not sincere as it has published in the website that the business is on-going and providing services for 24 hours and only fair that the respondent be made to pay a reasonable amount.

Both parties filed written submissions.

The court has considered the application, the affidavits and written submissions. The respondent is seeking to pay the decretal sum of ksh.1, 030,161 in Ksh.50, 000 equal instalments until payment in full.

Order 21 Rule 12 of the Civil Procedure Rules grants the court power to allow a judgment debtor pay decretal sum by instalments. The rule provides that;

(1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) After passing of any such decree, the court may on the application of the judgment debtor and with the consent of the decree-holder or without the consent of the decree holder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit.

In **Keshavji Jethabhai & Brothers Ltd v Saleh Abdul [1959] EA** the court held that;

*... the mere fact that the debtor is hard pressed or is unable to pay in full at once is not sufficient reason for granting leave to pay by instalments. Ordinarily he should be required to show his **bona fides** by arranging prompt payment of a fair proportion of the debt, although prompt payment of a fair proportion of the debt is not a condition precedent for the exercise of the discretion of granting instalments. Each case has to be decided on its own merits, the predominant factor being of course the **bona fides** of the judgment debtor.*

The respondent's case is that due to the Covid-19 pandemic, business went low making it impossible to pay the decretal sum save as an entity, no financial returns have been filed. Judgement was delivered on 25th October, 2019 way before the pandemic and nothing was done to offset the judgement sum.

In the pleadings and judgement, the claimant was earning Ksh.112, 500 per month. To pay the sum of Ksh.50, 000 per month is on the lower end and only fair that a similar amount similar to the monthly salary during the pendency of employment be paid in the proposed instalments each month.

The offer to pay in instalments is form 5th February, 2021. There is no evidence of payment to date.

The respondent as the judgement-debtor shall offset the decretal sum by Ksh.112, 500 per months and until payment in full save, such payments shall be backdated to 4th February, 2021 and paid upfront and within the next 30 days.

Accordingly, application dated 1st February, 2021 is allowed in the following terms;

- (a) There shall be stay of execution of the judgement and all consequential orders issued herein to all the respondent pay the decretal sum in instalments;**
- (b) The respondent shall pay Ksh.112,500 due form 5th February, 2021 to date within the next 30 days;**
- (c) The balance thereof shall be paid in equal instalments of ksh.112,500 each 5th day of the month and until payment in full;**
- (d) In default, stay (a) above shall automatically lapse; and**
- (e) The respondent shall meet the costs herein.**

DELIVERED IN COURT AT NAIROBI THIS 10TH DAY OF JUNE, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and