



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 481 OF 2019**

**KEVIN OTIENO WAMURE.....CLAIMANT**

**-VERSUS-**

**XPLICO INSURANCE CO. LTD.....RESPONDENT**

**RULING**

1. The application before me is the respondent's Notice of Motion dated 4.9.2020 brought under Order 51 Rule 1,2 & 3, Order 22 Rule 22 and Order 10 Rule 11 of the Civil Procedure Rules, Section 3A of the Civil Procedure Rules Act and Article 49 of the Constitution of Kenya.

The application seeks the following reliefs:

- a. Stay of Execution of the judgement herein pending hearing and determination of the application.
- b. Leave to allow the applicant to settle the judgement debt by monthly instalments of Kshs 100,000 until payment in full.

2. The application is supported by the affidavit sworn on 4.9.2020 by applicant's Principal Director Mr Julius Mwangi. The claimant has opposed the application by his own replying affidavit sworn on 21.9.2020.

3. The applicant's case is that a judgement of Kshs 733,161.45 was entered against it and on 9.7.2019 an auctioneer proclaimed its office furniture and accessories; that due to financial constraints it negotiated with the claimant to allow it settle the debt by instalments of Kshs 100,000 per month but the claimant declined; that application is in good faith and it will not prejudice the claimant; and that the application has been made without undue delay and the court has discretion to grant the relief sought.

4. It relied on **Andrew Kuria Njuguna t/a Ongata Enterprise Samiuki Mungai Vs Rose Wambui Kuria [2012] eKLR** and urged that it has met the legal threshold for granting the orders sought.

5. The claimant's case is that the application is a delaying tactic by the applicant; that the applicant admitted the debt of Kshs 730,711.45 and offered to pay by instalments but failed to do so forcing him to file this suit; that after judgement was entered the applicant never approached him again with any proposal for settlement; that the applicant is dishonest and discretion should not be exercised in its favour; that to date no cent has been paid by the applicant and that the application ought to fail because it is purely aimed at subverting the cause of justice.

**Determination**

6. After careful consideration of the application, affidavits and submissions, the issue for determination is whether the court should allow the applicant to settle the judgement debt herein by instalments of Kshs 100,000 per month till payment in full.

7. The law applicable to the said question is order 21 Rule 12(2) of the Civil Procedure Rules which provides:

*“(2) After passing of any decree, the court may on the application by the Judgement 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 property of the judgement debtor, or the taking of security from him or otherwise as it thinks fit”*

8. In this case the decree-holder is not consenting to settlement of the decretal sum by instalments. Consequently, the applicant is bound to

demonstrate sufficient cause to justify the exercise of discretion of the court. In the supporting affidavit, the applicant's Principal Director contended that the company is facing financial constraints; that it approached the claimant with a request for settlement of Kshs 100,000 per month and that the claimant will not suffer prejudice.

9. The alleged financial challenges have not been supported by documentary evidence. Even if that was the case the applicant was able to pay the monthly instalments of Kshs 100,000 since September 2020 when the application was filed but to date no evidence of payment of any cent towards the decreed sum has been adduced. Finally, since the judgement was entered the applicant has never approached the claimant for negotiations on the mode of settlement of the decree. Had the applicant been keen on paying the Kshs 100,000 per month from September, 2020, by now the decreed sum would have been fully settled.

10. In view of the foregoing observations, I am of the considered view that the applicant has not established any sufficient cause to warrant granting of the relief sought. The Principal Director deposed that the applicant had started paying the decreed sum and that it had negotiated settlement of the decree by instalments of Kshs 100,000 per month. However, as things stand now, that allegation under oath was not factual and therefore it is not compatible with the exercise of discretion by the court. In the end I find the application devoid of merits and I dismiss it with costs. The interim order of stay is also vacated.

**Dated and delivered at Nairobi this 3<sup>rd</sup> day of June, 2021.**

**ONESMUS N. MAKAU**

**JUDGE**

**ORDER**

**In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> April 2020, this Ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**ONESMUS N. MAKAU**

**JUDGE**