



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

**AT MOMBASA**

**CAUSE NUMBER 483 OF 2017**

**BETWEEN**

**KENNEDY SILA MAKENZI.....CLAIMANT**

**VERSUS**

**KWALE INTERNATIONAL SUGAR COMPANY LIMITED.....RESPONDENT**

**RULING**

1. The Claimant obtained Judgment against the Respondent on 19<sup>th</sup> September 2019. The Respondent was ordered to pay to the Claimant, compensation for unfair termination, at Kshs. 633,979.
2. The Respondent subsequently filed an Application on 6<sup>th</sup> November 2019, supported by an Affidavit sworn by its Legal Officer Gibson Kabue, asking to be allowed to liquidate the decretal sum in 10 equal instalments.
3. The Respondent explains that it had been shut down by Kenya Bureau of Standards in 2018, and its factory had suffered a fire incident. It was not therefore in a position to immediately pay the decretal sum. Operations would resume on 15<sup>th</sup> December 2019.
4. The Claimant filed Grounds of Opposition on 21<sup>st</sup> November 2019. His position is that the Application is defective, and the Respondent guilty of inordinate delay in presenting its Application. The orders sought are not supported by evidence.
5. Parties consented on 28<sup>th</sup> November 2019, to have the Application considered on the strength of Written Submissions which have since, been placed on the record.

**The Court Finds:-**

6. The Respondent has shown that its factory was closed by Kenya Bureau of Standards, and indeed the Respondent filed H.C. Petition Number 226 of 2018 at Mombasa, seeking to have the Kenya Bureau of Standards compelled to lift the order of closure.
7. It is apparent that at the time the Claimant obtained his Judgment, the Respondent was under closure, and therefore not generating revenue.
8. There is similarly a Fire Report on record, prepared by Protectors Limited, establishing that the Respondent suffered a fire incident, on 24<sup>th</sup> November 2018.
9. These incidents would be expected, to have effect, on the Respondent's ability to operate its business optimally, and generate sufficient funds, to meet financial obligations.
10. It is not unreasonable for the Respondent to seek judicial moratorium on satisfaction of the decree.
11. However, Judgment was delivered in September 2019. The Claimant's contract was terminated about 3 years ago, in 2017. His right to expeditious administration of justice must not be overlooked. The Respondent ought to have commenced payment by instalments, and seek the endorsement of the Court, when instalments were actively being paid.
12. It is now 6 months from the date Judgment was delivered.

13. The Court shall therefore allow the Application, but back-date instalments from September 2019, with the result that the Respondent shall pay to the Claimant 6 months' instalments in one deposit, and 4 months in subsequent instalments.

IT IS ORDERED:-

- a. The Respondent shall immediately pay to the Claimant, in one deposit, 6 months' instalments of the decretal sum and costs.**
- b. The balance shall be paid in 4 equal monthly instalments.**
- c. No order on the costs of the Application.**

**Dated and delivered at Mombasa this 26<sup>th</sup> day of March 2020.**

**James Rika**

**Judge**