



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT

AT MOMBASA

CAUSE NUMBER 115 OF 2012

BETWEEN

DAVID KABORI RIMBERIA.....CLAIMANT

VERSUS

SUMMIT COVE LINES COMPANY LTD.....1ST RESPONDENT

JOSEPH MUTHAMA KIREMA.....2ND RESPONDENT

Rika J

Court Assistant: Andrew Mwabanga

Akanga Alera & Associates Advocates for the Claimant

Mokaya Ogutu & Company Advocates for the Respondents

RULING

1. Judgment was delivered in favour of the Claimant, in the sum of Kshs. 700,000, on 28th March, 2019.
2. The Respondents filed an Application on 17th September, 2020, asking to be allowed to liquidate the decretal sum, in instalment, of Kshs. 100,000, effective 15th January, 2021.
3. The Application is based on the Affidavit of the 2nd Respondent herein, Joseph Muthama Kirema, sworn on 16th September, 2020.
4. Kirema explains that the Claimant filed a Notice of Appeal against the Judgment, but has not taken steps to prosecute the Appeal. The Respondents were surprised to receive warrants of attachment from the Claimant, on 14th September, 2020. The Respondents are willing to meet the decree, but their cargo transportation business, has been adversely affected by Covid-19 pandemic.
5. The Court has not traced any response to the Application, filed by the Claimant. On 8th October, 2020, Parties were directed to file Submissions, and the Application to be considered on the strength of the record. They filed their respective Submissions on 19th October, 2020.

The Court Finds: -

6. Judgment was delivered over one year ago, some months before the emergence of Covid-19 pandemic.
7. The Respondents would have met the decree in full by October, 2019, if they paid instalments of Kshs. 100,000 monthly. That is, before the emergence of Covid-19.
8. The Notice of Appeal filed by the Claimant, did not amount to an order for stay of execution. It did not affect the Respondents' obligation under the Judgment.

9. The Claim was filed in 2012 – 8 years ago. Settlement must not be delayed. By proposing to start payment in January, 2021, the Respondents are asking this Court to ignore the Claimant’s right to fair and expeditious administration of justice. There should be no further delay.

IT IS ORDERED: -

a. The Application filed by the Respondents on 17th September, 2020 is declined.

b. No order on the costs.

Dated and delivered at Mombasa this 26th day of October, 2020.

James Rika

Judge