



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA

CAUSE NUMBER 227 OF 2017

BETWEEN

GIDEON INZAYI MADAHANA.....CLAIMANT

VERSUS

1. SESSION CLERK

2. BOARD OF TRUSTEES, P.C.E.A.....RESPONDENTS

Rika J

Court Assistant: Andrew Mwabanga

M/s Cootow & Associates Advocates for the Claimant

Mburu Kariuki & Company Advocates for Respondent

RULING

1. Judgment was entered in favour of the Claimant, against the Respondents, for the sum of Kshs. 686,400, costs and interest, on 5th December, 2019.
2. Party and Party Bill of Costs was subsequently taxed, and Certificate of Costs issued on 31st August, 2020, in the sum of Kshs. 206,828.
3. On 2nd September, 2020, the Respondents lodged an Application seeking 3 principal orders:-
 - a) Execution of Judgment and Decree is stayed, pending hearing and determination of this Application.
 - b) Postponement of execution till February, 2021 and /or when Schools reopen.
 - c) The Respondents are allowed to liquidate decretal sum through monthly instalments of Kshs. 50,000.
4. The Application is based on the Affidavit of Loise Wanjiku, Secretary to the 2nd Respondent, sworn on 1st September, 2020.
5. Wanjiku depones, the 2nd Respondent is a Non-Profit Christian Organization. It relies on school fees from Students, as its sole source of income. It is not able to pay the decretal sum, standing at Kshs. 893,228 at once. It has issued a cheque for the sum of Kshs. 150,000 to the Claimant's Advocate as a show of commitment to satisfy the decree. The Respondents' financial position is compounded by the Government's directive, suspending schooling till 2021, as a measure of containing Covid-19 pandemic. The School is operating in red.
6. The Application is opposed. The Claimant filed Grounds of Opposition on 15th September, 2020. His position is that the Application is an afterthought. The sum of Kshs. 150,000 was paid upon filing of the Application, in order to sway judicial discretion in favour of the Respondents. The Claimant submits, the Application is aimed at delaying satisfaction of the decree.
7. Parties recorded a consent order, to have the Application considered and determined on the strength of the record. They filed submissions, underscoring their respective positions.

The Court Finds: -

8. Judgment was delivered on 5th December, 2019. It is true that subsequently, in March, 2020, school activities were suspended countrywide, as a measure of containing Covid-19 pandemic. The Government declared 2020 academic year as lost. Schools would hopefully, reopen in 2021.

9. It is not disputed that the 2nd Respondent is a Non-Profit Christian Organization. It operates a School, and depends on school fees paid by Students, to finance its operations. There is no doubt that without school fees, and without other revenue streams, the School cannot meet its financial obligations in full.

10. The Judgment delivered by this Court is one such obligation. While it is acknowledged that the Claimant merits enjoyment of his fruits of litigation, it would be imprudent to disregard the effect of the novel coronavirus on the Respondents' ability to pay. The right of the Claimant in actualisation of the decree, must be balanced carefully against the Respondents' ability to pay, amidst a ravaging pandemic and troubled global economies.

11. The Respondents have paid a sum of Kshs. 150,000 to the Claimant. They propose to pay monthly instalments of Kshs. 50,000. If the Court understands the Respondents correctly, payment would be from the month of February, 2021.

12. The Court has taken into account the proposal made by the Respondents, and the Claimant's right to fair and expeditious settlement, and makes the following **ORDERS:-**

a) The Respondents shall pay to the Claimant, the sum of Kshs. 206,828 in costs, on or before 1st December, 2020.

b) The balance of the principal sum, together with accrued interest, shall be paid in monthly instalments of Kshs. 150,000, from 28th February, 2021, and on or before the 30th date of subsequent months, till payment is made in full.

c) In default of any one instalment, the orders herein shall become void and the Claimant shall be at liberty, to execute on the entire balance of the decree.

d) No order on the costs.

Dated and delivered at Mombasa this 10th day of November, 2020.

James Rika

Judge