



REPUBLIC OF KENYA  
IN THE EMPLOYMENT & LABOUR RELATIONS  
COURT OF KENYA AT MERU

CASE NO. 6 OF 2017

(Formerly Nyeri ELRC No. 267 of 2017)

JAPHET BUNDI.....CLAIMANT/RESPONDENT

VERSUS

MERU MULTI-PURPOSE CO-OP

SOCIETY LIMITED.....RESPONDENT/APPLICANT

RULING

1. The Respondent/Applicant seeks through the notice of motion application dated 7<sup>th</sup> February 2019 and filed on 8<sup>th</sup> February 2019 for orders to pay the decretal sum by instalment. In the motion, the Applicant asserts that there is an intent to liquidate the decretal sum in instalments as the Applicant is not financially capable of paying the full decretal sum plus costs and interest in lump sum. The Applicant asserts it is paying very huge loans and thus has been incurring massive losses. The Applicant argues as it is paying terminal benefits to 7 other former employees, it would be just for the court to grant the prayer to pay by instalment.

2. The Claimant/Respondent urges the court to disallow the motion as in the motion the Applicant had shown there were profits of between 3.4 million and 7.7million in 2015-2017. The Respondent argues that the application was made late and the proposal laughable as the payments will take 9 years to effect. He thus urges the court to dismiss the motion.

3. In an application seeking to have payments effected by instalment, the law provides as follows under Rule 12(2) of Order 22:-

*12. (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 installments 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. (underline mine)*

The Applicant has a right to seek the remedy it now seeks in the motion. The court must however have consideration as to sufficiency of the entreaty sought. What constitutes “sufficient cause” in the context of rule 12 above are:-

- (a) the circumstances under which the debt was contracted
- (b) the conduct of the debtor
- (c) his financial position
- (d) his *bona fides* in offering to pay a fair proportion of the debt at once

There is no dispute that the debt was incurred as wages due to the Respondent for services he rendered to the Applicant. The Applicant has shown that it has massive debt but nevertheless has a high turnover. The Applicant has also curiously not offered a payment of a fair proportion of the debt at once. In my view, the prayer to pay by instalments fails to meet the test laid out in the case of **M A Bayusuf & Sons Limited v Express Kenya Limited & Another [2017] eKLR**. The application is devoid of merit and is dismissed with costs to the Claimant/Respondent.

It is so ordered.

**Dated and delivered at Nyeri this 13<sup>th</sup> day of March 2019**

**Nzioki wa Makau**

**JUDGE**

I certify that this is a true copy of the Original

**Deputy Registrar**