



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT
AT MOMBASA
CAUSE NUMBER 593 OF 2014
(Originally Nairobi IC Cause No. 115 of 2010)

BETWEEN

KAMLESH V. RAWAL.....CLAIMANT

VESRUS

ACHELIS MATERIAL HANDLING LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Asige Kiverenge & Anyanzwa Advocates for the Claimant

Wandabwa Advocates for the Respondent

RULING

1. Judgment was delivered on 24th February 2017. The Court ordered the Respondent to pay to the Claimant Kshs. 12,341,079.90 as commission; interest at 14% per annum on the principal from 12th February 2010; and costs.
2. The Respondent has applied by way of Notice of Motion dated 22nd January 2018, to be granted leave to liquidate the decretal sum in monthly instalments of Kshs. 100,000, or any other sums the Court may deem fit, till full and final payment.
3. The Application is based on Section 3A of the Civil Procedure Act, Order 21 Rule 12, Article 159 of the Constitution of Kenya, and all other enabling provisions of the law. It is supported by the Affidavit of Respondent's Chairman Gideon Mworira, sworn on 22nd January 2018.
4. Mr. Mworira states it is impossible for the Respondent to raise the decretal sum which stands in excess of Kshs. 26 million; the Respondent is experiencing liquidity issues; the Respondent is facing liquidation crisis as a result of non-payment of debts owed by various County Governments to the Respondent, amounting to Kshs. 474 million; and currently the Respondent is in the process of pursuing these debts.

5. The Deponent also explains that the Respondent has lodged an Appeal against Judgment at the Court of Appeal at Nairobi. He expresses his displeasure against the Trial Court (E&LRC), for declining to grant the Respondent an order for complete stay of execution, pending hearing of the Appeal.

6. The Claimant is opposed to the Application. He filed his Replying Affidavit, sworn on 2nd February 2018. His position is that the Respondent has not shown any sufficient cause, to be allowed to liquidate decretal sum, in instalments. The Affidavit by Mworira confirms the Respondent has the resources to satisfy the decree. The Application is made in bad faith, and is meant to delay, defeat and derail satisfaction of the decree.

7. The Application was heard on 7th February 2018. Parties restated the contents of their Affidavits on record.

The Court Finds:-

8. The Respondent has not shown there is sufficient reason, to stagger payment of the decretal sum.

9. The proposal to pay instalments of Kshs. 100,000, against a total amount of over Kshs. 26 million, is unreasonable and unacceptable.

10. The debt subject matter of the Judgment, arose way back in 2010. The principal sum has been owing to the Employee for 8 years today. An order for staggered liquidation would prolong the Claimant's wait for payment of a very old debt. As found in the Judgment, the Claimant made persistent demands for payment to the Respondent before filing the Claim. The demands were ignored. The Respondent has not even offered to pay the principal sum at once, before instalments on the balance, comprising interest and costs, could be considered.

11. After Judgment was delivered, the Court granted Respondent stay of execution of 40 days. There was no proposal made to liquidate decretal sum in instalments, during this period of stay.

12. Inexplicably the file went missing, after the Claimant applied for execution in September 2017, and it was not until 24th November 2017, when the Court directed reconstruction of the file, that Parties were able to move the Court.

13. Between February 2017 and January 2018, no proposals were communicated to the Claimant, for staggered payment of the decretal sums.

14. Interim orders of stay of execution have issued in this Court and the Court of Appeal. The Respondent did not utilize the space given through these Orders of stay of execution, to propose payment by way of instalments.

15. Demand letter issued by the Respondent to various County Governments for payment of Kshs. 474 million, issued on 13th June 2017. The Respondent did not disclose if this debt, or any part thereof, has been paid 8 months down the line. The Court agrees with Claimant's submission, that given the value of transactions involving the Respondent and the various County Governments, it does not seem likely that the Respondent suffers liquidity issues to justify payment of an 8-year old debt, within a period close to 30 years.

16. ***The Application filed by the Respondent on 22nd January 2018 lacks merit. It is rejected with costs to the Claimant.***

Dated and delivered at Mombasa this 15th day of February 2018.

James Rika

Judge