



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 35 OF 2014**

**JOSEPH ATIENO AKETCH**

**CLAIMANT**

v

**RAIPLY WOODS (K) LIMITED**

**RESPONDENT**

**RULING**

1. This ruling is in respect of a motion dated 6 December 2016 by the Respondent seeking

*(a) This application be certified urgent and heard on priority.*

*(b) There be a stay of execution of the Judgment and decree herein pending the hearing and determination of this application interpartes.*

*(c) The warrants of attachment and sale herein granted on 30<sup>th</sup> November 2016 be set aside.*

*(d) The Respondent be granted leave to pay the amount due in instalments.*

*(e) Costs of this application be in the cause.*

2. The Court certified the motion urgent on 7 December 2016 and also granted stay of execution in terms of order (b) on the same day. As a result, the decretal sum of Kshs 522,791/- was deposited into Court on 15 December 2016.

3. The legal consequence of the grant of the *ex parte* orders on 7 December 2016 are that prayers sought under (a) and (b) have lapsed and need not be considered in this ruling.

4. In this respect, the substantive orders for determination are, one, setting aside the warrants of attachment and sale, and two, granting leave to the Respondent to settle the decretal sum in instalments.

5. Considering that the decretal sum has already been deposited into Court (albeit late by 1 day), there would be no legal justification to allow the warrants to stand.

6. As regards the prayer to allow the settlement of the decretal sum through instalments, the Court has come to the conclusion that the prayer is not only unmerited but misplaced.

7. Unmerited because the Court's attention was not drawn to any statutory basis for granting the same. The Respondent also did not show any financial reasons why it could not pay in lump sum, when it readily and easily deposited the decretal sum in Court.

8. Misplaced, because the Respondent did not even demonstrate or suggest that it had engaged the Claimant on the mode of settlement and that the Claimant had refused to accept such a proposal.

9. Although the Respondent attempted to make much of the fact that it was not notified of the ruling date on taxation (the record indicates that the Taxing Officer scheduled the ruling on taxation for 26 April 2016 in the presence of Ms. Kambo holding brief for Ms. Langat for the Claimant and Mr. Mwalo for the Respondent and ruling was delivered on 8 July 2016 instead), it has not shown what prejudice it suffered because it was not represented during the delivery of the ruling.

10. Equally no reference has been preferred against the ruling.

11. The Court therefore declines the invitation by the Respondent and dismisses the motion with costs to the Claimant.

12. The Claimant is awarded costs because the motion ought not to have been filed in the first place.

13. The decretal sum should be released to the Claimant's advocate on record.

**Delivered, dated and delivered in Nakuru on this 20<sup>th</sup> day of January 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant      Mr. Wanga instructed by Gordon Ogola, Kipkoech & Co. Advocate

For Respondent      Ms. Nasimiyu instructed Ms. Gicheru & Co. Advocate

Court Assistant      Nixon/Daisy