



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

CAUSE NO. 16 OF 2013

(Originally Nairobi Cause No. 72 of 2011)

FREDRICK NGARE MUCHIRA & 98 OTHERS CLAIMANT

V

PYRETHRUM PROCESSING CO OF KENYA RESPONDENT

RULING

1. Before Court is an Amended Notice of Motion by the Respondent filed in Court on 4 April 2017 seeking

1. ...

2. **THAT** pending hearing of the Application inter-parties this Honourable Court be pleased to order for stay of execution and or sale by public auction of the Applicant's property through Nasioki Auctioneers scheduled for 24th March, 2017 or on any other date or any execution of the warrants of attachment and of sale given on 2nd February, 2017 consequential to the Judgment of this Honourable Court.

3. **THAT** this Honourable Court be pleased to order review of the warrants of attachment and or sale of moveable property given on 2nd February, 2017 and/or give further directions so that the said warrants reflect the actual sum of money payable after taking into account a sum of Kshs 8,000,000/= paid on 11th October, 2016 and received and the interest computed by the Respondent based on the actual balances following each payment were not taken into account during preparation of the warrant and an additional sum of Kshs 1,500,000 paid on 9th March 2017 and received yet the Claimants still seek through their Notice of sale served on 16th March for 24th March to recover a sum of Kshs 16,864,270/=.

4. **THAT** this Honourable Court be pleased to order for reconciliation of the accounts through the parties accountants for purposes of determining the actual balance payable since the Claimants have excluded a whopping sum of Kshs 9,500,000/= since according to the applicant's computation only a sum of Kshs 469,335.72/= is payable.

5. **THAT** the costs of this application be provided for.

2. The Claimants filed in Court on 11 April 2017 and 24 July 2017 two replying affidavits sworn Howard Kipkoech in opposition to the amended Motion.

3. Pursuant to directions from the Court, the Respondent filed written submissions on 5 September 2017 while the Claimants filed written submissions on 19 September 2017.

4. Before delving into the application some brief background would be in order.

5. Pursuant to judgment/decreed of the Court of 19 July 2013, the Respondent was ordered to pay to the Claimants Kshs 61,919,493/-.

6. The Respondent did not pay the decretal sum and the Claimants moved to execute. The Respondent's properties were severally proclaimed/attached and the parties got into negotiations as a result of which instalment payments were made.

7. As of July 2017, the Respondent had paid the Claimants a total of Kshs 79,919,493/-.

Stay of execution

8. Order 2 in the amended motion became spent when the Court allowed stay of execution on condition that the sum of Kshs 469,355/- be deposited into Court, a condition which was complied with on 29 March 2017 through deposit receipt number 049546.

Review of warrants of attachment/reconciliation

9. Orders 3 and 4 sought review of the warrants of attachment to reflect the correct balances outstanding and the reconciliation of accounts.

10. The wording of the proposed orders 3 and 4 were so verbose that they did not bring out the real issues in dispute, as even grounds which should have been relied upon were included as part of the orders.

11. There isn't much dispute as to the amounts paid. It appears to the Court that the bone of contention between the parties is whether the interest was to be calculated on the actual balances (remaining outstanding) or on the principal amount and whether it should be on a reducing balance or compounded basis.

12. The Claimants contend that the correct formula is compounded interest of 14% applied on the decretal sum while the Respondent took the position that the same should be on a reducing basis on the outstanding balances at any point in time.

13. The Claimants in the submissions seemed to appreciate the contention by the Respondent that simple interest on a reducing balance is the general rule rather than the exception as outlined in their cited cases of *Anab Hussein Arab v Small Enterprises Finance Co. Ltd*, High Court Civil Case No. 500 of 2000 and *Barclays Bank (K) Ltd v William Mwangi Nguruki* (2014) eKLR.

14. And on using compound interest, the Claimants asserted that their economic and social rights, inflation and opportunity costs were relevant considerations in using compounded interest formula.

15. In the view of the Court, the question regarding interest is straight forward and should not have reached the point of disputation between the parties.

16. For one, the Court which decreed payment of interest did not direct that it be compounded on the principal decretal sum as propositioned in *Feroz Nuralji Hirji v Housing Finance Company of Kenya Ltd & Ar* (2015) eKLR, an authority relied on by the Claimants.

17. Two, the Claimants never moved Court to award interest on a compounded basis based on the grounds of opportunity costs, inflation, economic and social rights.

18. Three and in the same vein, interest should be calculated on the actual amounts outstanding/balances

as it would not only be unconscionable and usurious to charge interest on amounts not owing, but unlawful as well, unless the parties have expressly agreed otherwise.

19. It would be against common sense and all sensibilities of fairness for a party to apply interest on amounts not owing notwithstanding the financial status of the other party.

20. That would be the classic case of a millennial shylock.

21. It is apparent that the Claimants applied the exception to the general rule on calculation of interest without a court direction to depart from the general rule.

22. For the above reasons, the Court finds merit in the Respondents application and orders that

(i) The warrants of attachment and sale given on 2 February 2017 be reviewed and set aside.

(ii) The Claimants and Respondent appoint one Accountant each to reconcile the accounts based on simple interest on reducing balances.

(iii) The 2 Accountants be joined by a third Accountant appointed by the Institute of Certified Public Accountants of Kenya and whose fees are to be shared by the parties on 50% basis each.

23. Each party to bear own costs.

Delivered, dated and signed in Nakuru on this 1st day of December 2017

Radido Stephen

Judge

Appearances

For Claimants Millimo Muthomi & Co. Advocates

For Respondent Rodi, Orege & Co. Advocates

Court Assistants Nixon/Martin