



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 371 OF 2014

LUCIA MUTHONI MERIA.....CLAIMANT

VS

ACDEMIC SERVICES LINTED.....RESPONDENT

RULING

Introduction

[1] The application before me is the Notice of Motion dated 16. 5. 2016 by Respondent in the main suit herein after called the applicant. The motion is brought under Oder 22 Rule 22 and Order 10 Rule 11 of the Civil Procedure Rules (CPR) and all other enabling provisions of the law and it seeks basically for leave of the court to settle the decreed sum by monthly instalments of kshs.90, 250.

[2] The motion is opposed by the claimant through the replying affidavit sworn on 7. 6. 2016 the gist of which is that the application operates a chain of schools and is therefore capable of settling the decreed sum at once. The motion was disposed of by written submissions.

Applicant's case

[3] It was submitted for the application that this court entered a regular judgment in favour of the claimant on 23. 3. 2015 and the claimant executed for Kshs.1, 433,722 as the judgement debt. That she has since paid Kshs.433,722 leaving a balance of Kshs.1,000,000 which she submits that she can settle by 5 equally instalments of Kshs.200,000 per month.

Claimant's case

[4] The claimant submitted that judgement was entered for her by this court on 23. 3. 2015 in the sum of Kshs.1, 083,000 and later costs were taxed in her favour in the sum of Kshs.175, 752. That after the applicant defaulted to pay, the claimant commenced execution. That only then did the applicant move to this court on 16. 5. 2016 to seek leave to settle the decreed sum by instalments.

[5] The claimant submitted that the motion is incompetent as it is brought under the wrong provisions of the law. In addition the claimant contents that the motion lacks merit because no sufficient cause and good faith has been demonstrated by the applicant to warrant delay in settling the decree debt.

Analysis and Determination

[6] There is no dispute that, as at 16. 5. 2016 the judgement debt herein against the applicant paid me Kshs.1433722. That following the order of the court the applicant paid Kshs.433, 722 to the claimant leaving a balance of Kshs.1,000,000. The issue for determination is whether the applicant has shown sufficient cause to warrant the grant of the order for payment of the decreed sum by installments.

Sufficient Cause

[7] Under order 21 rule 12 (2) of the Civil Procedure Rules (CPRs,) the onus of proving sufficient cause for purposes of obtaining the leave to pay by instalments is on the judgment debtor. The mere fact that the debtor is in financial deficiency is not enough proof of a sufficient cause to warrant the leave to pay by instalments. The applicant must demonstrate good faith by offering to make reasonable and prompt portions of the debt owing.

[8] The foregoing view has been accepted in various judicial opinions which were cited by the parties herein including *James Kariuki Nganga t/a Ndarungu merchants vs. Joseph Ngae Njuguna and Another [2004] eKLR, Lions export & import Agency Ltd vs HEMS Group Trading co. Ltd, and Shamshudin Miltroowani vs. Aron Marketing services 'K' Ltd and another [2004] e KLR.*

[9] In this case the claimant never demonstrated that she lacks the ability to pay. She only submitted that she has not budgeted for the judgment debt. No good reason was given for not budgeting. Her main complaint is that the decree was served by registered post and the warrants of execution do not indicate the return date. She has however demonstrated good fault by her willingness to settle the debt by monthly instalments. Initially she offered to settle the debt by monthly installments of Kshs.90,210 per month but after objection by the claimant she reviewed the sum to Kshs.200, 000 per month.

[10] After considering the right of the claimant to realize the fruit of his judgment and also the offer of Kshs.200000 as monthly instalments by the applicant, I find that justice will be done to both parties by granting the leave to pay the decreed sum by monthly installments Kshs.200,000 effective from 20.6.2016 when the order was made. That means that, the installments for June, July and August 2016 shall be paid in lump sum and the outstanding balance inclusive of interest will be paid in installments of Kshs.200,000 per month starting 20th September 2016 till payment in full and in default execution for the balance will issue.

Disposition

[11] For the reasons stated above leave is granted to the applicant to settle the judgment debt herein by equal monthly installments of **Kshs.200,000** effective 20. 6. 2016 and every 20th day of the succeeding months until payment of the judgment debt in full.

Costs of this motion to the claimant

Signed, Dated and Delivered this 9th day of September 2016.

ONESMUS MAKAU

JUDGE