



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NUMBER 151 OF 2010

BERNARD KURIA MWANGI

PETER GICHANGI WACHIRA

MICHAEL KAHARU WACHIRA.....CLAIMANTS/RESPONDENT

VERSUS

KASTURI LIMITED.....RESPONDENT/APPLICANT

RULING

1. the applicant in this matter seeks orders among others that there be a stay of execution of the decree herein pending the hearing and determination of the application herein, that an order to issue allowing the respondent to liquidate the decretal sum in instalments or Kshs.50,000/= per month and that the court waives interest levied on the judgment sum.
2. The application was based among others on the ground that the applicant was evicted from its business premises and as a result, the applicant's business has been badly hampered and that the applicant was servicing a loan facility at Family Bank diminishing its ability to settle the decretal sum at once.
3. The application was supported by the affidavit of one Biprichandra P. Shah.
4. The application was opposed by the claimant on the grounds among others that the matter had been heard and determined by the Court hence the application should not be heard as the Court had become functus officio. Further that the applicant's prayer to liquidate the decretal sum herein at Kshs.50,000 per month is inordinately low and unreasonable having regard to the date of the judgment. The claimant further opposed the application by stating that the Court does not have the power or authority to waive or vary the interest and costs awarded to the claimants.
5. Whereas the applicants counsel's submissions could be found on file, the claimants were not. Counsel submitted that the Court had discretion to grant the orders sought by the applicant. Concerning the considerations the Court should take into account in whether or not to grant the orders sought, counsel invited the Court to the case of **Jabali Alidina v. Lentura Alidina**. Counsel further relied on the case of **Freight Forwarders Ltd v. Eliek and Elsek (K) Limited**.
6. An application to settle the decretal sum as correctly submitted by counsel, is a matter for the discretion of the Court. In considering such an application the Court must balance the scales and consider that the decree holder already has a judgment on merit to which no appeal has been preferred and a stay granted. The Court therefore in considering the application ought to guard

against unreasonably delaying the decree-holder from enjoying the fruits of his or her judgment.

7. On the other hand the Court ought to be sensitive to the financial implications on the judgment debtor on having to paying the decretal sum in full especially if the same might involved more than the regular income or revenue of the decree holder. Just like was stated by Parker L. J in the case of **Rosengrens Ltd v. Safe Deposit Centre (1984) 3 ALLER198**, the Court is concerned with preserving the rights of both parties. It is not the function of the Court to disadvantage the applicant while giving no legitimate advantage to the decree holder.

8. The applicant has stated that it is undergoing some financial downturn compounded by its recent eviction from the business premises where it conducted business. It therefore expressed fear that the payment of the decretal sum herein would occasion it serious cashflow problems.

9. The decretal sum herein including interest at the time this application was made was Kshs.2,322,785/=. The initial judgment sum was Kshs.1,477,783/= when it was delivered on 9th November, 2012. The Bill of Costs was taxed on 5th December, 2014 and a certificate of costs issued on 11th February, 2015.

10. The warrants of attachment were subsequently issued on 18th February, 2015. There seems to be a time lag from when the judgment was entered against the applicant and when the warrants were issued but this may be attributed to delays in securing date for taxation and the usual bureaucratic delays at the registry and between counsel for the parties. The import of this however is that the decree holder came closer to enjoying the fruits of the judgment in his favour when the warrants of attachment was issued on 18th February, 2015. To this extent, it cannot be said that the decree holder has been kept away from the fruits of his Judgment for too long.

11. The applicant has however offered to pay Ksh.50,000/= per month until settlement in full. This would take some 46 months to complete in other words approximately 4 years.

12. In an application for payment by instalments, the Court considers the circumstances under which the debt was contracted, the conduct of the debtor, his financial position and the bona fides in offering to pay a fair portion of the debt. These are the principles that were laid out in the **Jabali's** case relied on by the applicant.

13. The applicant in this case has put forward his precarious financial position occasioned by eviction from business premises as well as repayments of a commercial loan to Family Bank. These grounds are understandable however the Court as stated earlier must bear in mind the circumstances of the decree holder the effect of keeping them for too long before they can be fully paid the decretal sum.

14. The claimants were the applicant's employees earning between Kshs.5,000 per month to Kshs.8000 per month. This award was as a result of unfair termination of their services. If their services were not terminated, the lowest paid would have had an annual income of Kshs.60,000 and the highest paid Kshs.96,000/= considering that they claimed they were being under-paid and the matter also proceeded undefended, the Court is of the view that a balance need to be struck between the windfall of an ex parte judgment and the way the sums became payable to the applicants on one hand and the financial circumstances of the applicant on the other.

15. This Court doing the best it can in the circumstances, directs that the applicant pays up-front the sum of Kshs.200,000/= on or before 30th July, 2015 and thereafter liquidates the balance of the decretal sum in monthly instalments of Kshs.50,000/= until payment in full with effect from end of August, 2015.

16. It is so ordered.

Dated at Nairobi this 26th day of June 2015

Abuodha J. N.

Judge

Delivered this 26th day of June 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent

Abuodha J. N.

Judge