



Crown Bus Services Ltd v Mukani (Suing as the administrator of the Estate of Moses Onganga Wafula) (Civil Appeal 240 of 2023) [2025] KEHC 506 (KLR) (27 January 2025) (Ruling)

Neutral citation: [2025] KEHC 506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 240 OF 2023
JM NANG'EA, J
JANUARY 27, 2025**

BETWEEN

CROWN BUS SERVICES LTD APPELLANT

AND

**JUDITH WERE MUKANI (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF MOSES ONGANGA WAFULA) RESPONDENT**

RULING

1. By Notice of Motion dated 22/3/2024, the Appellant seeks reliefs as hereunder;
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 2. That pending the hearing and determination of this application, this Honourable Court be pleased to issue orders allowing the Judgment Debtor to pay the pending decretal sum to the Decree Holder in monthly instalments of Kenya Shillings One Hundred Thousand (Kshs. 100,000/=).
 3. That pending the hearing and determination of this application, this Honourable Court be pleased to issue orders compelling the 1st Respondent to give a proper tabulation of the pending decretal amount.
 4. That pending the hearing and determination of this application this Honourable Court be pleased to issue orders compelling the Respondents to immediately release motor vehicles registration number KBR 492B Scania Bus and motor vehicle KBX 875R Scania Bus to the Applicant.
 5. That pending the hearing and determination of the Appeal herein, this Honourable Court be pleased to issue orders allowing the Judgment Debtor to pay the pending decretal sum to



the Decree Holder in monthly instalments of Kenya Shillings One Hundred Thousand (Kshs. 100,000/=).

6. That pending the hearing and determination of the appeal herein, this Honourable Court be pleased to issue orders compelling the 1st Respondent to give a proper tabulation of the pending decretal amount.
 7. That pending the hearing the determination of the appeal herein, this Honourable Court be pleased to issue orders compelling the Respondents to immediately release motor vehicles registration number KBR 492 Scania Bus and motor vehicle KBX 875R Scania Bus to the Applicant.
 8. THAT costs of this application be provided for.
2. The Motion is supported by Affidavit sworn by the Appellant's Operations Manager (Mohamed Ahmed). It is averred that on 6/3/2024 my brother Justice H. M. Nyaga delivered a ruling on the Appellant's application dated 20/11/2023 seeking inter alia, orders allowing payment of the decretal sum herein by instalments of Kshs. 100,000/= per month; compelling the 1st Respondent to give a proper tabulation of the pending decretal sum and a further order compelling the Respondents to immediately release motor vehicles registration numbers KBR 492 Scania Bus and KBX 875R Scania Bus to the Appellant. The orders were sought pending the hearing of the application. The Respondents had obtained judgment in the sum of Kshs. 5,262,332/= against the Appellant following a fatal road traffic accident which the Appellant's other Motor Vehicle Registration Number KAW 938G was involved.
 3. The Appellant's Operations Manager further deposed to payment of part of the decretal (Kshs. 3,000,000/=) by their injurer in an effort to settle the dispute amicably. The court is however, told that owing to Covid 19 constraints the Appellant was not able to settle the balance of the decretal sum in full as the transport industry in which it was a player was hard hit by the pandemic thereby adversely affecting its finances.
 4. The Appellant therefore offered to liquidate the remaining decretal sum by the proposed installments. The court, however, dismissed the application with costs.
 5. The Appellant seems to be bringing the same or substantially the same application before this court.
 6. The Respondents did not put in a reply.
 7. Learned Counsel for the parties made oral submissions on the Application. Mr. Okatch for the Appellant submitted that his client is unable to make a lump sum payment to the Respondents because of financial stress. Reliance was placed on judicial determinations in *Botanicks Kenya Ltd vs Ensan Food Kenya Ltd*. 1959 EA; *A Rajabali Allidina vs Remtulla Allidina & Another* [1961] EA 565 and *Freight Forwarders Ltd vs Elseka Elsek (k) Ltd*. [2012] eKLR. The court is told that in these decisions it was held that financial or economic hardships are a factor to consider in exercise of judicial discretion to allow liquidation of decretal amounts by instalments.
 8. Mr. Mukisu Advocate for the Respondents expressed his clients' willingness to accept instalment payments. Counsel, however, suggests a down payment of Kshs. 4,000,000/= followed by monthly instalments of Kshs. 250,000/=. It is also contended that the Appellant has not demonstrated its financial status.
 9. In the final interjection, Mr. Okatch urged the court to ignore the Respondent's Counsel's reply on matters of fact as affidavit evidence has not been filed.



10. I have perused the application, Counsel Submissions and the record. When Counsel appeared before me on 4/11/2024, it was agreed that the outstanding decretal sum was Kshs. 7,002,162.92 as at 20th June 2024. This part of the dispute is therefore resolved.
11. As stated in this application, a court of concurrent jurisdiction Justice H. M. Nyaga has already pronounced itself on essentially the same application by the ruling dated 6/3/2024 dismissing the application. The Court had, however, declined to consider the merits reliefs sought on the ground that they were erroneously claimed pending hearing and determination of the application rather than pending hearing and determination of the appeal. This application seems to have been brought to rectify the error. The reliefs now sought are payment of the decretal sum by instalments as proposed pending hearing and determination of the appeal; An order compelling the Respondents to demonstrate the balance of the decretal sum owing pending hearing and determination of the appeal and finally, released of the above stated vehicles to the Appellant pending hearing and determination of the appeal.
12. Regarding the prayer for liquidation of the balance of the decretal sum by instalments, the Appellant laments that it faces financial constraints owing to the Covid 19 pandemic that affected the country. This relief is still defective as if the proposal is allowed the matter would be settled and there would be no appeal to be heard. The prayer cannot therefore be granted pending appeal.
13. As already noted, the decretal sum due has not been established. This prayer is therefore spent.
14. Regarding the prayer for release of the Appellant's said vehicles pending hearing and determination of the appeal, the vehicles were apparently seized for attachment and sale in the execution of the decree. The Appellant has not offered prima facie evidence that the Respondent would not be able to repay proceeds of sale of the vehicles if the appeal succeeds. Notwithstanding, the respondents have not filed affidavit evidence in opposition to the application.
15. Doing the best I can in the circumstances, the Appellant is ordered to pay a sum of Kshs. 3,000,000/= to the Respondents within 30 days from the date. The balance of the decretal sum still owing shall be deposited into court within the same period. Subject to compliance with these conditions, stay of execution pending appeal is ordered. The costs of the application will abide the appeal.
16. Ruling accordingly.

RULING DELIVERED VIRTUALLY THIS 27TH DAY OF JANUARY, 2025 IN THE PRESENCE OF:

J. M. NANG'EA - JUDGE

The Appellant's Advocate, Ms Angela Advocate for Mr. Okatch

The Respondent's Advocate, Mr. Mukisu Advocate

Court Assistant, Jeniffer.

J. M. NANG'EA - JUDGE

