



REPUBLIC OF KENYA



Ikumbi v Waciuri (Civil Case 90 of 2009) [2024] KEHC 1861 (KLR) (28 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1861 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 90 OF 2009
SM MOHOCHI, J
FEBRUARY 28, 2024**

BETWEEN

SAMUEL MBUGUA IKUMBI JUDGMENT DEBTOR

AND

VERONICAH WANIJRU WACIURI DECREE HOLDER

RULING

1. This suit had been filed on the 25th March 2009 and the same was heard costs of the suit and concluded with a Judgment dated 7th November 2014 by M. J. Anyara Emukule Judge. The Decree-Holder was awarded kshs 7,870,000/- with interest at Court rates from the date of judgment plus 50%.
2. So, it is now ten (10) years since judgment in this case and the file is back before me. This matter is at the execution stage, meaning that for one reason or the other the Decree-Holder is yet to access the fruits of her judgment.
3. This Court had on the 19th July 2023 issued interim orders as follows:
 - a. The Application is hereby certified as urgent warranting being heard and disposed of ex-parte in the first instance.
 - b. That, a Temporary Order of Stay of Execution of Judgment dated 7th November 2014 and any Decree is hereby Issued, pending hearing and determination of this Application;
 - c. The Applicant serves the Application, upon the Respondents within the next three (3) days from the date hereof-Not later than 20th July 2023;
 - d. The Respondent to file a Written Response to the Application, within Seven (7) Days of service upon them of the Application, Not later than 27th July 2023;



- e. The Applicant to file and serve his Written Submissions (Maximum 5 pages, within Seven (7) Days of service upon them of the Respondents written Response, Not later than 3rd August 2023;
 - f. The Respondent shall file their Written Submissions (Maximum 5 pages), within Seven (7) Days of service upon them of the Applicant written submission, Not later than 10th August 2023; and
 - g. The Ruling on the Application shall be delivered on email on the 14th August 2023.
4. Before me is Notice of Motion filed pursuant to Order 22 Rule 22, Order 21 Rule 12 (2), and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A and 3A of the Civil Procedure Act and all other Enabling Provisions of the law seeking the following relief;
- i. Spent
 - ii. Spent
 - iii. That, this Honourable Court be pleased to allow the Defendant/Applicant herein to pay the remaining decretal sum in the amount of Kshs. 5,800,000/= at a monthly installment of Kshs. 500,000/= until payment in full.
 - iv. That, the Honourable Court be pleased to restrain the Plaintiff/Respondent from levying execution herein for as long as the Defendant/Applicant pays the proposed monthly installments;
 - v. That, the costs of this application be provided for.
5. The Application is supported by a sworn affidavit of Samuel Ikumbu dated 10th July 2023 and is anchored on the following grounds: -
- i. That, the Honourable Court entered judgement in favour of the Decree-Holder herein for a net sum of Kshs 7, 870, 00/= together with interests at Court rates and costs of the suit.
 - ii. That, the parties herein agreed on the cost of the suit and the same was paid to the Decree-Holder.
 - iii. That, the Judgment-Debtor therein dissatisfied with the decision of this Court appealed the judgment but the said appeal was dismissed with costs.
 - iv. That, sometime in July 2022, the Judgment-Debtor herein was served with a notice to show cause for Kshs 11, 848, 066/=.
 - v. That, after intense negotiations, parties agreed on an all-inclusive figure of Kshs 8,500,000/=,
 - vi. That, so far, the Judgment-Debtor herein has managed to pay a sum of Kshs 2, 700,000/= leaving a balance of Kshs 5, 800,000/= which he is still paying.
 - vii. That, to clear the balance, the Judgment-Debtor herein prays that he is allowed to clear the balance at a monthly installment of Kshs 500,000/=.
 - viii. That, at the moment the Judgment-Debtor is not able to pay the balance in lump sum and/or comply with the orders of the Court due to financial constraints.
 - ix. That, the Judgment-Debtor herein is also ailing and in need of medical care which has drained him financially.



- x. That, it is in the interests of justice and equity that the Judgment-Debtors be allowed to pay the remaining amount in the sum of Kshs. 5, 800,000/= on a monthly installment basis until full payment.
- xi. That, no prejudice will be occasioned on the Decree-Holder herein if the orders sought herein are granted.
- xiii. That, it would be in the interest of justice that the application herein be allowed as prayed.

Judgment-Debtor Case

- 6. That, judgement was entered in favor of the Decree-Holder for a net sum of Kshs 7, 870, 000/= together with interests at Court rates and costs of the suit.
- 7. That the parties herein agreed on the cost of the suit and the same was paid to the Decree-Holder.
- 8. That, the Judgment-Debtor being dissatisfied with the decision of this Court appealed the judgment but the said appeal was dismissed with costs.
- 9. That, sometime in July 2022, the Judgment-Debtor was served with a notice to show cause for Kshs 11, 848, 066/=.
- 10. That, after intense negotiations, parties agreed on an all-inclusive figure of Kshs 8,500,000/=.
- 11. That, so far, the Judgment-Debtor has managed to pay a sum of Kshs 2, 700,000/= leaving a balance of Kshs 5, 800,000/= which he is still paying.
- 12. That, despite the Judgment-Debtor's desire to clear the balance, he is currently facing financial challenges which are constraining me and he is not able to clear the balance.
- 13. That, he is ailing and in need of medical care which has drained him financially.
- 14. That, he prays to be allowed to clear the balance at a monthly installment of Kshs 500,000/= until payment is in full.
- 15. That, it is in the interests of justice and equity that he is allowed to pay the remaining amount in the sum of Kshs. 5, 800,000/= on a monthly installment basis until full payment.
- 16. That, no prejudice will be occasioned on the decree-holder herein if the orders sought herein are granted.
- 17. That, this application has been made in good faith and it is in the interest of justice that the application herein be allowed a prayed.
- 18. That, what is deponed to hereinabove is true to the best of my knowledge, information, and belief.

Decree-Holders Case

- 19. The Application is opposed by Replying Affidavit of Veronica Wanjiru dated 27th July 2024.
- 20. That, it is true that on the 29th June 2022 she obtained from Court a 'Notice to show cause' against the Judgment-Debtor for a sum of Kshs. 11,848,066/- and the Judgment-Debtor was supposed to appear in Court for the hearing of the Notice to Show Cause on the 26th July 2022.
- 21. That, it is within her knowledge that, the Judgment-Debtor through his counsel engaged them with a view of getting a rebate on the accumulated interest with their final offer being Kshs. 8,500,000/-.



22. That, in principle she agreed to a settlement of a discounted sum of Kshs. 8,500,000/= which was however subject to the Judgment-Debtor making a substantial monthly instalment and settle the entire sum within 12 months.
23. That, the Judgment-Debtor however stuck to the figure of Kshs. 500,000/= as monthly instalments.
24. That, there being no agreement on the monthly instalments even offer bad in principle acceded to the request of the Judgment-Debtor for rebate she could not therefore record a consent on the amount payable nor on the monthly instalments.
25. That, the Judgment-Debtor has paid a total of Kshs. 2,750,000/= as per the following schedule:
 - i. Kshs. 500,000/-paid on the 30th August, 2022
 - ii. Kshs 500.000/= towards Court of Appeal party to party costs on the 30th August, 2022.
 - iii. Kshs. 350,000/- paid on 12th October, 2022
 - iv. Kshs. 350,000/- paid on the 11th November, 2022
 - v. Kshs. 500,000/=paid on the 5th January, 2023
 - vi. Kshs. 500,000/- paid on the 3rd March, 2023
26. That, from the foregoing schedule of payments, the Judgment-Debtor has not paid any sum of money since March 2023 and the outstanding amount continues to attract interest.
27. That, it is within her own knowledge that the Judgment-Debtor has the financial ability to pay the outstanding sum in lumpsum if not a substantial part thereof.
28. That, the Judgment-Debtor is a well-established businessman with businesses in various sectors including real estate fetching a tidy sum of rental income.
29. That, the judgment and decree sought to be executed was delivered in the yet 2014 which is now more than 9 years and she should not be unduly frustrated from enjoying the fruits of her judgment.
30. That, if the Court were to grant any orders of payments by installments, the monthly sum should be substantial and not the proposed sum of Kshs. 500,000 per month.
31. That, Since the Notice to Show Cause was first issued by the Court she has for more than one year acted with restraint but the Judgment-Debtor is not committed to settling the decretal sum within a reasonable time.

Conclusion and Determination

32. This Matter is at the execution stage and before the eyes of the Court, execution for ten (10) years is prejudicing of the Decree-Holder and that such gross delays should be eliminated.
33. I equally affirm that the Judgment dated 7th November 2014 by M. J. Anyara Emukule Judge remains in force 'as is' without any modifications alterations whatsoever. It should be recalled that the judgment remained intact upon dismissal of the Appeal before the Court of Appeal. Any attempt at inviting this Court to modify the Award therein by post facto pronouncements shall be rejected.
34. It is the Courts expectation for full execution of the judgment as soon as is practical after delivery of judgment but not decades thereafter, so this Court affirms that great prejudice has been and is being occasioned on the Decree-Holder each and every day the Judgment-Debtor fails to pay.



35. While Parties may agree and offer each other rebates, waivers or prolonged term limits the same is extralegal and is encouraged, however those agreements so reached cannot have judicial color unless formally reduced into writing and recorded as a consent for adoption.
36. This Court observes a concession made by the Decree-Holder that should the Court be so inclined to allow the Application then the amount payable as monthly instalment should be enhanced.
37. This Court shall not be invited into the bargain as it is anticipated that the entire judgment ought to have been paid way back in the year 2014.
38. This Court is unpersuaded that the Judgment-Debtor is currently facing financial challenges as no evidence was presented.
39. I have however constrained to make orders that are in furtherance of efficient Administrations of justice.
40. The Court thus Orders as follows;
 - i. The Judgment-Debtor to pay a monthly installment of Kshs. 600,000/= towards the remaining decretal sum at until payment in full.
 - ii. The monthly installments shall be payable on or before the 5th of each calendar month with the 1st instalment being on or before the 5th March 2024.
 - iii. That any default by the Judgment-Debtor will allow the Decree-Holder execute the decree with any other available compulsive modes.
 - iv. The temporary orders of stay against execution of judgment/decree are hereby vacated.
 - v. The Costs of this Application are awarded to the Decree-holder

It is So Ordered.

SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 28TH DAY OF FEBRUARY, 2024.

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MOHOCHI S.M
(JUDGE)

