



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL SUIT NO 470 OF 2001

MERIDIEN BIAO BANK LTD

(IN LIQUIDATION) PLAINTIFF

VERSUS

CHRISTOPHER MURIUKI KARUE

LYDIAH WANDIA KARUE T/A

WANDIKA GENERAL AGENCIES DEFENDANTS

RULING

This is an application by Lydiah Wandia Karue one of the defendants for stay of execution and payment of the decretal amount in instalments of Kshs.30,000/= per month. The application is by Chamber Summons made under Order XXI Rule 22 (1) (2), Order XX Rule 11 (1) Section 3A of the Civil Procedure Act. It is also purportedly made under "all other enabling provisions of the law."

Counsel for the said Defendant/Applicant relies on the grounds set out in the body of the Chamber Summons and on the Applicant's affidavit in support sworn on 17th November, 2003. The applicant in her affidavit aforesaid says at paragraph 9 that she is "just a house wife with no income." She proposes to pay the decretal amount at the rate of Kshs.30,000/= per month from money to be remitted by her husband who is now working in Botswana. She has not exhibited evidence of this in her affidavit.

Counsel for the decree holder opposes this application and has filed a replying affidavit of one B K Mitei the liquidation agent of the decree holder in response to the Applicant's application aforesaid. At paragraph 5 of Mr Mitei's said affidavit dated 18th November, 2003 it is deponed that on 11th September, 2003 the judgment debtors made a proposal to pay a lump sum of Kshs.80,000/= before 30th September, 2003 and thereafter pay monthly instalments of Kshs.40,000/=. I have seen the letter of 11th September, 2003 from the judgment debtors advocates addressed to the Decree holder's advocates in which the said proposal was made. This proposal was accepted by the Decree holder in

their advocates letter dated 25th September, 2003. The deposit of Kshs.80,000/= was not made. None of the instalments promised was paid.

The Applicant in the present application proposes to pay instalments of Kshs.30,000/= per month with effect from 30th November, 2003 and thereafter each succeeding month until payment in full. No single instalment has been paid since.

I am being urged to order payment by instalments notwithstanding the judgment debtor's default.

Under Order XX Rule 2 I have a discretion to postpone payment of the decretal amount or order payment of the decretal amount by instalments. This discretion however is not absolute. "Sufficient cause" must be shown. This requirements and conditions had been stated in the same words in the case of **RAJABALI ALIDANA VS REMTULLA ALIDINA & ANOTHER (1961) E A 565** .

The circumstances to be taken into account include the "conduct" and "bona fides" of the judgment debtor and not the financial position of the debtor alone.

In my ruling the judgment debtor has not shown sufficient cause for my discretion to be exercised in her favour. Her conduct has also not been without blame. She made a proposal in the present application which she failed to honour. A previous proposal through her advocates was also not honoured. No explanation was made as to why any of the proposals was not honoured. Justice looks at both sides of a dispute. The circumstances of the present case are such that I must refuse to grant the prayers sought in the application dated 17th November, 2003 which is hereby dismissed with costs.

Dated and Delivered at Nairobi this 16th day of January, 2004.

F. AZANGALALA

JUDGE

16.1.2004



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