



Wambui (Suing as the legal representatives of the Estate of Maureen Muthoni Wambui) v Kimani & 2 others (Civil Case 333 of 2014) [2022] KEHC 16888 (KLR) (Civ) (21 December 2022) (Ruling)

Neutral citation: [2022] KEHC 16888 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 333 OF 2014
JK SERGON, J
DECEMBER 21, 2022**

BETWEEN

PRISCILLA WAMBUI (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF MAUREEN MUTHONI WAMBUI) PLAINTIFF

AND

**RICHARD KIMANI 1ST DEFENDANT
ROSE MUGO 2ND DEFENDANT
EXPRESS CONNECTIONS LTD 3RD DEFENDANT**

RULING

1. The 1st, 2nd and 3rd defendants herein respectively took out the motion dated September 20, 2022 whereof they applied for the following orders:
 - i. That this application be certified as urgent and service be dispensed with in the first instance.
 - ii. That the firm of M/s Derek Joe & Co. Advocates be granted leave to come on record and represent the defendants/ applicants in this suit.
 - iii. That pending the hearing of this application inter-parties the honourable court be pleased to stay any further proceedings in this matter.
 - iv. That pending the hearing of this application inter-parties the honourable court be pleased to stay any further proceedings in this matter.



- v. That there be a stay of execution in this matter.
 - vi. That the warrants of proclamation of the property, warrants of sale of property and proclamation of attachment in execution of decree of money issued on September 12, 2022 be set aside and/or lifted unconditionally.
 - vii. That this honourable court be pleased to have the decretal sum liquidated into monthly instalments of kshs.100,000/= until payment in full.
 - viii. That costs of this application be in the cause.
2. The applicants filed the affidavit sworn by Mary Mwangi in support of the aforesaid motion. The plaintiff/respondent filed a replying affidavit to oppose the application.
 3. I have considered the grounds stated on the body of the motion and the facts deponed in the rival affidavits. I have further considered the rival oral submissions of learned counsels. The remaining prayers the applicants are seeking are two main orders: First, is an order for stay of execution and secondly, is an order for leave to settle the decree by instalments. The first order is dependent on the outcome of the second prayer for settlement of the decretal sum by instalments.
 4. The applicants beseeched this court to grant them an order permitting them to liquidate the decretal sum of kshs.3,572,929/= by monthly instalments of ksh.100,000/=. The applicants argued that the decretal amount is too big for them to settle at once given the prevailing economic circumstances. They also pointed out that the property proclaimed are valued way beyond the decretal amount.
 5. The plaintiff/respondent opposed the application arguing that the applicants have not demonstrated that they are unable to settle the decree at once. They also rejected the proposal of instalments stating that it will take 50 months to settle the decree which is a long period of time.
 6. The respondent urged this court that if it is inclined to indulge the applicants, then the applicants should be ordered to pay at once 70% of the decretal amount and settle the remaining balance by instalments. The applicants responded to the aforesaid proposal arguing that they can only raise at once 30% of the decretal amount.
 7. Under Order 21 rule 12 of the *Civil Procedure Rules*, 2010, the court is given a wide discretion to order for the settlement of a decree by payment by instalments so long as sufficient cause is shown. In the instant application the applicants aver that they are unable to raise the decretal amount at once hence they require to be accommodated to settle the decree by monthly instalments.
 8. I find the reason given by the applicants to be plausible. With respect, I agree with the arguments made by the respondent that if the applicants are permitted to settle the decree as per their proposal it will take them 50 months to liquidate the decree which is unreasonable and oppressive to the plaintiff/ respondent. I am convinced that the defendants/applicants should pay a substantial amount by instalments plus an initial deposit.
 9. In the end, I allow the application giving rise to issuance of the following orders:
 - i. An order for stay of execution of the decree is granted to allow the defendants/applicants settle the decree by instalments.
 - ii. The defendants/applicants should make an initial payment of kshs.1,500,000/= to the plaintiff/ respondent within 30 days from the date hereof.



- iii. The defendants/applicants to liquidate the balance of the decretal sum of kshs.2,072,929/= by monthly instalments of ksh.200,000/= with effect from 5th February, 2023 and thereafter on the 5th day of each succeeding month until full payment.
- iv. In default of any one instalment, the order for stay shall automatically lapse and the plaintiff/respondent may execute the decree.
- v. Each party to meet his or her own costs of the motion.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 21st day of December, 2022.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Respondent

..... for the 1st Defendant/Applicant

..... for the 2nd Defendant/Applicant

..... for the 3rd Defendant/Applicant

