



**Ncooro v M’Ringuru & 6 others (Environment & Land Case  
43 of 2019) [2023] KEELC 18294 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18294 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 43 OF 2019**

**CK YANO, J  
JUNE 21, 2023**

**BETWEEN**

**JOSEPH MWEGA NCOORO ..... APPELLANT**

**AND**

**M MUNGANIA M’RINGURU ..... 1<sup>ST</sup> RESPONDENT**

**JULIUS KOBIA M’MUNGORU ..... 2<sup>ND</sup> RESPONDENT**

**SAMUEL MEME ..... 3<sup>RD</sup> RESPONDENT**

**CIOMUNORU MURUJU ..... 4<sup>TH</sup> RESPONDENT**

**NTONGAI M’IMATHIU ..... 5<sup>TH</sup> RESPONDENT**

**NYAMBENE DISTRICT LAND ADJUDICATION OFFICER 6<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. The appellant herein moved this court vide an application dated November 10, 2022 brought pursuant to Order 21 Rule 12 (2) of the [Civil Procedure Rules](#) and Sections 1A, 1B 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law wherein he seeks for orders that:-
  - 1) This application be certified urgent and be heard *ex parte* in the first instance.
  - 2) There be stay of execution over the costs taxed on September 23, 2022 and certificate issued on October 6, 2022.
  - 3) The applicant be allowed to liquidate the costs of Kshs 176,060/= by monthly instalment of Kshs 15,000/= until paid in full.
  - 4) Costs of the application be borne by the respondent.



2. The application is premised on the following grounds-;
  - a) Costs herein were assessed on September 23, 2022.
  - b) Certificate of costs were issued on October 6, 2022.
  - c) Defendants/respondents forwarded the certificate of costs to the plaintiff's/applicant's advocate on October 8, 2022 with a fourteen (14) days' notice to execute if payment is not done.
  - d) Applicant's/plaintiff's advocates took instructions and forwarded a cheque for Kshs 15,000 and a proposal on settlement at Kshs 15,000/= per month to the respondents'/defendants' advocate on November 1, 2022.
  - e) The respondents' advocates rejected the payment by instalments proposal and returned the cheque vide their letter of November 2, 2022.
  - f) It is only fair, mete and just that the present application be allowed.
3. The applicant in his supporting affidavit dated November 10, 2022 avers that he is eighty four (84) years old and that he is a peasant farmer and that he is aged and sickly with blood pressure and poor eye sight requiring constant medical attention. That his son, Kimathi Joseph Mwegu, died two years ago and left four (4) children who are in secondary school and the applicant takes care of them solely together with their mother together with two other children who are in primary school.
4. The applicant avers that he cannot afford more than Kshs 15,000/= per month and that the respondents know that they did not pay for the land they got but that he has accepted the court's verdict and leave the rest to the almighty God.
5. The applicant states that he is prepared to abide by the court's verdict and pay the costs but can only afford the proposed Kshs 15,000/= per month adding that the payment of those costs should not be used to impoverish or punish him.
6. The applicant further states that his advocate wrote to the respondent advocates on November 1, 2022 and forwarded a cheque of Kshs 15,000/= which the said advocates declined and returned on November 2, 2022 and has annexed the said letters and cheque marked JMN 1 & 2 respectively. That his advocates regretted the respondents advocate stance vide their letter of November 4, 2022 enclosed and marked "JMN 3"
7. The application is opposed by the 1<sup>st</sup> – 5<sup>th</sup> respondents through a replying affidavit sworn by the 5<sup>th</sup> respondent. He states that judgment in the matter was delivered on April 21, 2021 in which the respondents were awarded costs of the appeal. That since April 21, 2021, the applicant has always been aware that the respondents were entitled to costs and should have made arrangements to settle the costs once agreed upon or taxed by the court.
8. The 5<sup>th</sup> respondent further avers that on September 23, 2022, the respondent's bill of costs was taxed at Kshs 176,060 and a certificate of costs dated October 6, 2022 issued and that the applicant was duly notified of the same. That the applicant wrote to their advocate a letter dated November 1, 2022 with a proposal to settle the costs in monthly instalments of Kshs 15,000/= which proposal they rejected because the applicant was long aware of the payment of costs since April 21, 2021 and most importantly the applicant has the ability to settle the costs in lump sum and is simply unwilling to do so.
9. The 5<sup>th</sup> respondent avers that the applicant owns two large miraa farms where he derives over Kshs 300,000 monthly and that he is not a peasant farmer as alleged, adding that the fact that the applicant



has sustained the litigation in this matter since the year 2009 (14) years is the clearest confirmation that he is not a peasant farmer. That the allegation that the applicant is paying school fees for his grandchildren has not been proved and in any event the applicant has the ability to pay school fees and also pay their costs and is simply unwilling to pay their costs.

10. The respondents contend that all that they are pursuing is reimbursement of their costs which they have expended in defence of the claim by the applicant and it would be unfair to delay reimbursement of costs which they have incurred courtesy of the applicant.
11. The respondents aver that should court find it just to allow payments by instalments they humbly pray that the court orders that settlement be done in two equal instalments.
12. It is respondent's contention that the appellant's application is unmerited and the same should be dismissed.
13. The application was heard orally in court on the February 7, 2023 wherein the parties reiterated the contents of their affidavits.
14. I have considered the application as well as the affidavit in support and against. I find that the issue that requires determination is whether the applicant has established sufficient cause to be granted the order to pay the costs in instalments as prayed.
15. Order 21 Rule 12 of the [Civil Procedure Rules](#) gives the court a wide discretion as to whether payment of amount decreed will be postponed or settled by way of instalments. The same provides as follows-;  

“After passing of any such decree, the court may on the application of the judgment debtor and with the consent of the decree holder or without the consent of the decree holder for sufficient cause shown order that the payment of the amount decreed be postponed or be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment debtor or the taking of security from him or otherwise as it thinks fit”.
16. Whereas the above provision of law gives the court a wide discretion, this discretion must be exercised in a judicial and not in an arbitrary manner. An applicant is therefore required to show sufficient cause for the court to exercise its discretion in his favour.
17. The applicable principles were set out in [Botanics Kenya Ltd v Ensign Food \(K\) Ltd](#) [1959] and [A Rajabali Alidina v Remtulla Alidina & another](#) [1961] EA 565 thus-;  
  - a) The circumstances under which the debt was contracted.
  - b) The conduct of the debtor.
  - c) His bona fide in offering to pay a fair proportion of the debt at once”
18. In the case of [Freight Forwarder's Ltd v Elsek & Elsek \(K\) Ltd](#) [2012] eKLR the court narrowed the principles as regards to what amounts to sufficient cause to include the following-;  
  - a) the debtor is unable to pay in lump sum.
  - b) The debtor can pay by reasonable monthly instalments.
  - c) the application is made in utmost good faith.”



19. The case of *Kshvaji Jethabbhai & Bros Limited Vs Saleh Abdulla* ( 1959) EA 260 also laid down the principles that should guide the court in exercising its discretion as follows:
- “ a) Whilst creditors rights must be considered each case must be considered on its own merits and discretion exercised accordingly;
  - b) The mere inability of a debtor to pay in full at once is not a sufficient reason for exercise of the discretion.
  - c). The debtor should be required to show his bona fides by arranging prompt payment of a fair proportion;
  - d) Hardship of the debtor might be a factor, but it is a question in each case whether some indulgence can fairly be given to the debtor without prejudicing the creditor.”
20. It is therefore upon the applicant to demonstrate how his case falls into the applicable principles. It is trite that each case must be considered on its own merits and the mere fact of inability to pay the full sum at once is not sufficient reason. Any indulgence given to the judgment debtor must not prejudice the decree holder.
21. In this case, the applicant stated that he is an elderly person of 84 years who is sickly and unemployed and has other obligations of taking care of children of his deceased son and acknowledges the debt and he has shown interest to settle it before 7 months. The applicant further submitted that the respondent will not suffer any prejudice and urged the court to find the application is merited and allow it as prayed.
22. The court notes that on February 7, 2023, the applicant was directed to pay Kshs 15,000/= on or before March 15, 2023 and thereafter Kshs 15,000/- every month from April 15, 2023 pending this ruling.
23. Other than alleging inability to pay the costs at once for being a peasant farmer who also takes care of his grandchildren whose father is said to be deceased, the applicant has not demonstrated his financial position to enable the court ascertain the reasonable amount that he can pay. For example, the applicant never exhibited any evidence that he pays school fees for his grandchildren as alleged.
24. However, taking into account the proposal made by the applicant, and the counter offer made by the respondents, and considering the circumstances of this case, it will be for the interest of justice to balance the rights of the parties by allowing the applicant to make payments by instalments but upon reasonable amounts that will enable the respondents enjoy the fruits of the judgment.
25. In the result, I make the following orders-;
- a. The applicant will pay an initial lump sum of Kshs 50,000/- within thirty days from the date of this order.
  - b. Upon payment of the said sum under (a) above, the applicant will then pay a sum of Kshs 20,000/= per month with effect from the last day of the following month and continue to pay the said sum of Kshs 20,000/= on the last day of each subsequent month until payment in full.
  - c. In default of any single instalment in accordance with the orders herein above given and those given on February 7, 2023, the respondents will be entitled to execute forthwith for payment of the outstanding total decretal sum.
  - d. Stay of execution is thus granted on terms under (a) to (c) above.
  - e. The costs of this application will be borne by the applicant.



24. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 21ST DAY OF JUNE 2023**

**IN THE PRESENCE OF**

**Court assistant – V. Kiragu**

Nyaga for Appellant

Kiogora Nganga for 1<sup>st</sup> – 5<sup>th</sup> respondents

No appearance for A.G for 6<sup>th</sup> & 7<sup>th</sup> respondents

**C.K YANO**

**JUDGE**

