



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**(CORAM: CHERERE-J)**

**MISC. CIVIL APPLICATION NO.19 OF 2019**

**BETWEEN**

**FREDRICK OTIENO BONYO.....CLIENT/APPLICANT**

**AND**

**JAMES AGGREY MWAMU t/a MWAMU**

**& COMPANY ADVOCATES.....ADVOCATE/RESPONDENT**

**RULING**

1. By a ruling dated 17<sup>th</sup> October, 2019, the Advocates/Clients bill of costs dated 04<sup>th</sup> February, 2019 was taxed at Kshs. 133,290.96 (One hundred thirty-three thousand, two hundred ninety and ninety-six cents).
2. The Client/Applicant by his notice of motion dated 11<sup>th</sup> November, 2019 filed on 13<sup>th</sup> November, 2019 prays to be allowed to settle the taxed costs in monthly instalment of Kshs. 8,000/- from January, 2019 but it must have been meant to be 2020.
3. The application is based on grounds among others that applicant is not a man of means and cannot afford to pay the entire amount at once for the reason that he is over 80 years old and is unemployed.
4. The application is supported by an affidavit sworn by the applicant and filed on 13<sup>th</sup> November, 2019 in which he reiterates the grounds on the face of the application.
5. The application is opposed by way of a replying affidavit sworn by **JAMES AGGREY MWAMU advocate on 25<sup>th</sup> February, 2020 in which he agrees with the offer for payment in instalments but proposes a monthly sum of Kshs. 25,000/- monthly.**
6. In his further affidavit sworn on 02<sup>nd</sup> March, 2020 and filed on 04<sup>th</sup> March, 2020, the Applicant reiterates the averments in his supporting affidavit. He adds that the income from his business cannot enable him to pay the debt at once because he had two children in secondary school.

**ANALYSIS AND DETERMINATION**

7. I have considered the Notice of Motion in the light of affidavits on record.
8. Order 21 Rule 12 (2) of the Civil Procedure Rules, 2010 stipulates 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 installments on such terms.”**

9. In allowing an application for payment in instalments, it is apparent from the foregoing that the court ought to be guided by the following principles:

**The circumstances under which the debt was incurred**

10. The claim arises out of legal services rendered to the applicant by the advocate in **KISUMU HCCC NO. 101 OF 2001** from which a Bill of Costs was taxed on 17<sup>th</sup> October, 2019 for the sum of Kshs. 133,290.96 (One hundred thirty-three thousand, two hundred ninety and ninety-six cents).

**The conduct of the debtor**

11. There is no evidence that the applicant has made any effort to settle the costs, either in full or in part.

**The financial position**

12. Whereas the Applicant states that the income from his business cannot enable him to pay the debt at once because he had two children in secondary school, he has not provided evidence in support of his assestion. I would have expected the Applicant to tender evidence in support of his earnings to enable the court make an informed decision but he has failed to do so.

**The bonafides in offering to pay a fair proportion of the debt at once**

13. As a sign of good faith, it was expected of the Applicant to have made an effort to settle the decretal sum either in part or in full and also to place material before the court to prove his inability to settle the decretal sum at once, a burden that he has failed to discharge.

**DISPOSITION**

14. Having had due regard to the application and the replying affidavit *vis a vis* the applicable law, I have come to the conclusion that the Applicant has not demonstrated sufficient cause why he should be allowed to pay the decretal sum in instalments.

15. However, since the Advocate does not entirely oppose the payment in instalments, the court allows the notice of motion dated 11<sup>th</sup> November, 2019 filed on 13<sup>th</sup> November, 2019 on the following grounds:

**1) The Applicant shall pay to the Respondent Kshs. 30,000/- within seven (7) days from today's date**

**2) The Applicant is granted leave to settle the balance of the decretal sum in monthly instalments of Kshs. 15,000/- (Fifteen thousand) w.e.f the 5<sup>th</sup> day of April, 2020 and on the 5<sup>th</sup> day of each succeeding month until payment in full.**

**DELIVERED AND SIGNED IN KISUMU THIS 05<sup>th</sup> DAY OF March 2020**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

**Court Assistant - Amondi/Okodoi**

**Applicant/Client - Present in person**

**Respondent/Advocate - N/A**