



**Kibui v Wambua (Environment & Land Case 373 of 2017)
[2022] KEELC 2420 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 2420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 373 OF 2017**

YM ANGIMA, J

APRIL 28, 2022

BETWEEN

SALOME WANJIKU KIBUI PLAINTIFF

AND

HELLEN NDULU WAMBUA DEFENDANT

RULING

1. By a notice of motion dated December 9, 2021 grounded upon Order 22 Rule 22, Order 49 Rules 1,2,3 & 4 of the [Civil Procedure Rules 2010](#) and all other enabling provisions of the law, defendant asked the court to allow her to liquidate the decretal amount by instalments of Kshs 5,000/= per month. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the defendant on December 9, 2021.
2. The defendant contended that the plaintiff had commenced the process of execution against her for costs of the suit in the sum of Kshs 231,043/=. She contended that she was unable to settle the said amount in full since her monthly income from her salon business was about Kshs 10,000/= per month. The defendant further contended that a warrant of arrest had already been issued for her committal to civil jail on account of the unpaid costs and that her incarceration would undermine her ability to settle the decretal amount by instalments.
3. The plaintiff filed a replying affidavit sworn on January 10, 2022 in opposition to the application. The plaintiff contended that the application was defective and an abuse of the court process; that the defendant had previously failed to honour her promise on settlement of the debt; and that the defendant had failed to file an affidavit of means as known to law. The plaintiff was further of the view that the instant application was merely intended to delay the enjoyment of the fruits of her judgment. The court was consequently urged to dismiss the application.



4. The record shows that after the filing of the replying affidavit, the defendant filed an affidavit of means sworn on January 17, 2022. In the said affidavit, the defendant reiterated that the salon business was her only source of income that she earned a net profit of Kshs 10,000/= per month. She, therefore, urged the court to allow her application for leave to settle the decretal amount by instalments.
5. When the said application was listed for inter partes hearing on February 2, 2022 it was directed that it shall be canvassed through written submissions. The parties were granted 14 days within which to file and exchange their respective submissions. By the time of preparation of the ruling, however, none of the parties had filed submissions.
6. The court has considered the defendant's notice of motion dated December 9, 2021, the plaintiff's replying affidavit in opposition thereto as well as the defendant's affidavit of means. The court has further considered the material and judgment on record in this matter. It is evident that by a judgment dated October 29, 2019, the court declared that the plaintiff had acquired the defendant's suit property through adverse possession under section 38 of the *Limitation of Actions Act* (cap. 22). The court also made consequential orders to facilitate the registration of the Plaintiff as the proprietor of the suit property.
7. The plaintiff was also awarded costs of the action. The costs were subsequently taxed at Kshs 231,043/= by the taxing officer of the court. It is evident from the material on record that upon the defendant's failure to settle the taxed costs the plaintiff applied for execution by seeking the defendant's arrest and committal to civil jail.
8. There is evidence on record that the defendant is engaged in the business of operating a salon within Nyandarua County. She deposed that her monthly income therefrom is Kshs 10,000/= and that she had no other source of income. The plaintiff has not tendered any evidence to controvert what the defendant has placed before court. There is no evidence to demonstrate that the defendant has any other source of income apart from the salon income.
9. The court is inclined to allow the defendant to liquidate the decretal amount by instalments. However, the court is alive to the fact that if the defendant were to liquidate the same by monthly instalments of Kshs 5,000/=: it would take more than 4 years to settle the debt. Accordingly, the court shall enhance the amount to Kshs 7,500/= per month.
10. The upshot of the foregoing is that the court finds merit in the defendant's notice of motion dated December 9, 2021. Accordingly, the court makes the following orders for disposal thereof:
 - (a). The defendant shall liquidate the decretal amount by making payment of monthly instalments of Kshs 7,500/= on or before the 1st day of the month with effect from May 1, 2022 until payment in full.
 - (b). There shall be no order as to costs of the application.

RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 28TH DAY OF APRIL, 2022.

In the presence of:

Ms. Wanjiru Muriithi for the Plaintiff

No appearance for the Defendant

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Y. M. ANGIMA

ELC JUDGE

