



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HIGH COURT CIVIL CASE NO. 135 OF 1997**

**KENNETH  
MUTIGA.....PLAINTIFF**

**VERSUS**

**NTIMA FARMERS CO-OP. SOCIETY LTD .....1<sup>ST</sup>  
DEFENDANT**

**JOSEPH KIUMBE M'NANGA .....2<sup>ND</sup>  
DEFENDANT**

**RULING**

Judgment was entered for the plaintiff on 19<sup>th</sup> November 2010 against the 1<sup>st</sup> defendant for Kshs. 1million as general damages for the attack that the plaintiff suffered in the hands of the 2<sup>nd</sup> defendant who was an employee of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant filed the Chamber Summons dated 7<sup>th</sup> December 2010 seeking leave of this court to liquidate the decretal amount by payment of Kshs. 40,000/= per month. The application is brought under order 21 rule 12 (2) of the Civil Procedure Rules 2010. That rule provide as follows:-

***“12(2) After passing of 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.”***

The rule provides that after judgment, the decretal amount can be paid by instalments with the consent of the decree holder and if no consent is forthcoming where sufficient cause is shown to the court. The 1<sup>st</sup> defendant in its supporting affidavit stated that immediately judgment was entered for the plaintiff, it made an offer to the plaintiff to pay the decretal amount by monthly instalments of Kshs. 40,000/=. The plaintiff declined the offer. It pleaded that it would be unable to pay the wholesum at once. That its

principal business is to receive coffee deliveries from its members for sale. That the minimum commission it received for the years 2006 to 2009 was 20%. That the commission earned is the only source of the 1<sup>st</sup> defendant's income and that it cannot raise any other funds to enable it pay the amount of the judgment in this case. The 1<sup>st</sup> defendant annexed copies of income and expenditure account, statistical information for the years 2006 to 2009 amongst other documents. The 1<sup>st</sup> defendant deposed through its replying affidavit that it was experiencing serious financial constraints and pressure from its creditors who at the end of the close of the year 2009 stood at Kshs. 2,703,129/=. It was also stated that it had an outstanding bank loan with the Co-operative Bank of Kenya which requires regular servicing. The 1<sup>st</sup> defendant mentioned that the coffee industry which is its main stay was experiencing a decline in Kenya. It is in that background that it sought that the court will grant it leave to pay the decretal sum by monthly instalments of Kshs. 40,000/=. It should be noted that the 1<sup>st</sup> defendant has to date deposited into court Kshs. 340/= towards the liquidation of the decretal sum. In that, the 1<sup>st</sup> defendant has shown good faith. The plaintiff is opposed to the application. The main opposition is on the basis that the plaintiff was attacked by the 2<sup>nd</sup> defendant in 1997 and that to order the decretal sum be paid by instalments would only go towards delaying his enjoyment of his judgment. The plaintiff further annexed an official search of parcels *Ntima/Igoki/1785 and 836* which are registered in the name of the 1<sup>st</sup> defendant. In respect of those searches, the 1<sup>st</sup> defendant responded by stating that those parcels of land are held by it in trust for the members. Having considered the lengthy affidavits sworn on behalf of the 1<sup>st</sup> defendant and the replying affidavit of the plaintiff, I am satisfied that the 1<sup>st</sup> defendant have substantially shown sufficient cause why it should be allowed to pay the decretal amount by instalment. I am however of the view that the offer made by the 1<sup>st</sup> defendant is too low. I therefore grant the following orders:-

- 1. That the total amount of money deposited in court by the 1<sup>st</sup> defendant be released to the plaintiff forthwith.**
- 2. That the 1<sup>st</sup> defendant is granted stay of execution of the judgment of this court on condition that it pays the balance of the decretal sums to the plaintiff by monthly instalments of Kshs. 100,000/= per month with effect from 5<sup>th</sup> June 2011 and thereafter to pay similar amounts on the 5<sup>th</sup> day of each succeeding month until payment in full. In default of any one such payment, execution to issue.**
- 3. There shall be no orders as to costs of the Chamber Summons dated 7<sup>th</sup> December 2010.**

**Dated, signed and delivered at Meru this 18<sup>th</sup> day of May 2011.**

**MARY KASANGO**  
**JUDGE**