



**Ransley McVicker & Shaw Advocates v Blackstone Properties Limited (Miscellaneous Application 160 of 2019) [2022] KEELC 13285 (KLR) (26 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13285 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS APPLICATION 160 OF 2019  
JA MOGENI, J  
SEPTEMBER 26, 2022**

**BETWEEN**

**RANSLEY MCVICKER & SHAW ADVOCATES ..... APPLICANT**

**AND**

**BLACKSTONE PROPERTIES LIMITED ..... RESPONDENT**

**RULING**

1. The applicant brought the application dated March 17, 2021 under the provisions of article 159 of the Constitution order 21 rule 12, order 51 rule 1 of the Civil Procedure Rules and section 1A, 1B and 3A of Civil Procedure Act seeking the following orders:
  1. Spent.
  2. That the client be granted leave to liquidate the decretal sum in 8 equal monthly instalments to be paid on the 10<sup>th</sup> of each consecutive month until full and final settlement.
  3. Costs be costs in the cause.
2. The application is based on several grounds enumerated on the face of it and an affidavit dated May 19, 2022, sworn by the applicant through its director, Priscilla Ransley. Some of the grounds *inter alia* are:
  - a. That the respondent is keen on taking out warrants of arrest against the applicant for committal to civil jail.
  - b. The applicant is willing to pay off the decretal sum in monthly instalments for 8 months.
3. In the affidavit in support of the application, Priscilla Ransley deposed that despite the debt being against a limited liability company and the execution erroneously being against an 83 years octogenarian contrary to the fundamental principle of legal personality of limited liability company making it null and void, she stated that she is willing to pay the decretal sum but in instalments. She



stated that the client/applicant is approaching the court for a relief to liquidate the said taxed costs by monthly instalments. She attached copied of the warrants dated February 17, 2022

4. She further deposed that the client/applicant had written to the advocate/respondent acknowledging the debt and made proposals on settlement in instalments. The proposal was rejected by the advocate/respondent. She avers that client/applicant is the lawful registered owner of the suit property which is her only source of income where she gets rent but following the status quo order issued by Justice Chitembwe on 2/09/2021 and which was extended on November 16, 2021 the client/applicant is not able to receive rental income anymore from the suit property. As a result, this has hampered the capacity of the client/applicant to settle the decretal sum in lump sum.
5. She avers that the ruling was delivered on May 9, 2022 and so this application having been made on May 19, 2022 was made within reasonable time and that the advocate/respondent will not suffer any prejudice if the decretal sum is paid in instalments.
6. The application is opposed by the advocate/respondent through the replying affidavit dated June 16, 2022. The respondent has raised the following grounds through the replying affidavit:
  - i. The application is misconceived, made in bad faith and therefore an abuse of court process.
  - ii. The applicant is guilty of laches.
  - iii. The applicant has not sworn an affidavit of means.
  - iv. The application does not satisfy the prerequisites for the grant of the orders sought.
7. They contend that the advocate-client bill of costs was taxed with full participation of the client/applicant on July 15, 2021 and a decree extracted on January 11, 2022 and it relates to instructions issued and duly completed in 2015.
8. The application came up for hearing on June 2, 2022 and the client/applicant but the only the advocate/respondent was in court and he sought leave of 14 days to file their response. When the parties appeared before court on June 22, 2022 the advocate/respondent did not attend court but the matter was reserved for a ruling on September 26, 2022.
9. Ms Virginia Wangui Shaw learned counsel who works for the respondent submitted that instructions subject to the bill of costs was completed in 2015, taxed in 2021 and a decree extracted in 2022, the applicant had not made any effort to settle the decreed sum. The applicant has not presented before this court any evidence to demonstrate inability to pay the decretal sum nor any proposals made to liquidate the decretal sum. The respondent contends that the court can only exercise discretion in favour of a party who has demonstrated source of income and inability to pay.
10. On a without prejudice basis the respondent proposed the following:
  - a. The client/applicant to settle the decretal amount in 4 equal instalments payable on the 10<sup>th</sup> day of each consecutive month with interest at court rate until payment in full.
  - b. The client/applicant to pay auctioneers fees for proclamation to be agreed or as taxed by the taxing master if not agreed; and
  - c. In default of payment of any one instalment, on the due date, the advocate/respondent be at liberty to execute for the total outstanding sum due and payable.
11. The application was disposed of by way of written submissions.



12. The applicant submits that in granting an order under order 21 of the *Civil Procedure Rules*, the court exercises its judicial discretion so as to balance the rights of a decree holder who is on the one hand entitled to the fruits of its judgement as well as the rights of a bona fide judgment debtor who is willing to honour the judgement but is otherwise unable to pay the decretal sum in one instalment but has demonstrated ability to honour reasonable instalment payments and has made arrangements for such payments.
13. On the other hand, the respondent submits that the applicant has failed to present evidence that shows that he is willing to pay the decretal sum. Further that inability to pay in full at once is not a sufficient reason for exercising discretion in favour of the Applicant, for a decree that has been pending for the last 6 months.

### **Analysis and Determination**

14. Order 21 rule 12 of the *Civil Procedure Rule* provides as follows;
  1. Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.
  2. 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.”
15. As such the provisions of order 21 rule 12 (2) of the *Civil Procedure Rule, 2010* give the trial court a wide discretion as to whether payment of the amount decreed be postponed or settled by way of installments. Such discretion must be exercised in a judicial and not an arbitrary manner as was held in *A Rajabali Alidina v Remtulla Alidina & Anor.* (1961) EA 565, Law JA where it was stated that:-
 

“All commentators on the Civil Procedure Code agree that the court’s discretion to order payment of the decretal amount in installments is one which must be exercised in a judicial and not an arbitrary manner. The onus is on the defendant to show that he is entitled to indulgence under this rule.”
16. The court further went ahead and attempted to define what constitute sufficient reasons, which included the circumstances, under which the debt was contracted, the conduct of the debtor, his financial position, and his bona fides in offering to pay a fair proportion of the debt at once.
17. The power to order for payments by instalments vested to the court by this order is discretionary and the party making the application has to show sufficient cause. The decretal amount at the center of this application is Kshs 1,258,090.02/=. If the court were to allow the applicant’s prayer of settling the same in eight monthly instalments the applicant will be required to pay Ksh 157,261.25/= every month.
18. The applicant prayed for extension of 8 months to settle the decretal sum. It cannot be gainsaid that the decretal sum is not disputed. The applicant only prays for 6 months to settle the decretal sum. It is trite practice that upon entry of judgment, the judgment-debtor is required to settle the sum immediately unless by consent of parties or order of the court, the mode of payment is varied.



19. A cursory reading of order 21 rule 12 of the [Civil Procedure Rules](#) empowers the court to order settlement of the decretal sum by instalment or postponement thereof. The court in [Keshvaji Jethabbai & Bros Limited v Saleh Abdulla](#) [1959] EA 260 laid down the principles that should guide the court in the exercise of discretion in such matter and states 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. Further, in [Hildegard Ndalut v Lelkina Dairies Ltd & Anor.](#) (2005) eKLR, the court observed that:
- “...That case followed the principles laid down in the Indian case of [Sawatram Ramprasad v Imperial Bank of India](#) (1933) AIR Nag. 33 - that a defendant should be required to show his bona fides by arranging fair payment of the proportion of the debt – in persuading the court to allow payment by way of installments. This, in my view, is the proper test to apply in granting orders for payment of a decretal amount by way of installments. A judgment creditor is entitled to payment of the decretal amount, which he should receive promptly to reap the fruits of the judgment. The judgment creditor might genuinely be in a difficult position in paying the decretal amount at once. However, he has to show seriousness in paying the amount. In that event he should show his bona fides by arranging fair payment proposals to liquidate the amount”.
21. In [Freight Forwarders Ltd v Elsek & Elsek \(K\) Ltd](#) (2012) eKLR, Mwongo J 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.
22. Therefore, based on the foregoing the power to order payment by installments of the decretal amount is purely a matter of discretion of the trial court. Except, the exercise of discretion is circumscribed; sufficient cause must be shown and the indulgence to pay by instalments may be on such terms that the court thinks fit.
23. The onus of establishing sufficient cause rests on the applicant. However, in applying the above principles, the applicant's conduct towards the settlement of the decretal sum has not been encouraging. She took the matter serious only after she became aware that auctioneers had made a proclamation against her. The amount proposed will delay the respondent from enjoying their decretal sum. Further, the applicant has not filed affidavit of means to persuade the court about her financial position as at now. Therefore, it is my opinion that the applicant has not demonstrated sufficient cause to invoke the discretion of this court to be allowed to settle the costs in eight monthly instalments.



24. However, in the interest of justice and this court taking into account the fact that the applicant had already requested the respondent to allow her settle the decretal sum in instalments though the respondent did not accept this request, I shall allow the applicant to settle the decretal amount in the proposed eight (8) months effective from October 26, 2022 and on the 10<sup>th</sup> of every subsequent month.
25. The decree holder has on a without prejudice made proposals on how the judgment debtor can settle the decretal sum and the proposal made is for 4(four) months instalment payments. Therefore, since both the decree holder and judgment debtor seem agreed that the decretal sum can be paid in instalments I am satisfied that the applicant has been experiencing cash flow problems and that given time it will be in a position to fully settle the decretal sum.
26. I am at the same time conscious of the legitimate expectations of the decree holder, who is in possession of a valid decree, that he will be paid the entire decretal sum once the same is pronounced by the court, and that he has been waiting for the fruits of his judgment since the judgment was delivered.
27. Taking all these into consideration, I make the following orders:

The decree and warrants issued to Messrs Icon Auctioneers for execution of the decretal sum herein are suspended on the following terms: -

- a. That the judgment debtor pays the decretal sum in instalments of Kshs 1,527,261.25/- per month with effect from November 1, 2022.
- b. That all instalments due from the date of this court's orders permitting the judgment debtor to pay the decretal sum in instalments from November 1, 2022 are made on or before August 2023.
- c. That the judgment debtor shall pay auctioneer's fees for proclamation to be agreed or as taxed by the taxing master if not agreed.
- d. That in default of any one instalment or any condition herein, the suspension of the warrants shall be automatically lifted and the decree holder shall be at liberty to execute for the entire decretal sum outstanding together with costs and interest.
- e. The judgment debtor shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

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**MOGENI J**

**JUDGE**

**In the virtual Presence of:-**

Mr Andrew Mwangi holding brief for Mr Sisule for the Advocate/Respondent

None appearance for the Client/Respondent

Mr Vincent Owuor : Court Assistant

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**MOGENI J**

**JUDGE**

