

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 85 of 2004

ANDREW MUGUNA & 16 OTHERS
PLAINTIFF

VERSUS

MERU CENTRAL COUNTY COUNCIL & 2 OTHERS
DEFENDANT

RULING

This suit brought by fifteen (15) plaintiffs against the defendants was struck out with costs to the latter. Costs were subsequently taxed at Kshs. 75,390/=. Being apprehensive that the defendants/respondents may execute at any time, the plaintiffs/applicants have filed chamber summons dated 11th June 2008 for orders of stay of execution and leave to pay by a monthly instalment of Kshs. 1,500/= by each plaintiff/applicant.

The plaintiffs/applicants contend that they are ready to pay the taxed costs but need time as they do not have steady income. That they are retired civil servants and further that they are apprehensive that the defendants/respondents may target specific plaintiff/applicant for execution in revenge.

In opposing the application it is deposed for the defendants/respondents that the application is incompetent and frivolous. They further confirm that they have not demanded payment of the taxed costs.

Finally, it is contended that the plaintiffs/applicants are people of means capable of sharing between them the taxed costs at the rate of Kshs. 5,026/= each. The court has an inherent jurisdiction under order 20 rule 11(2) of the Civil Procedure Rules on application by the judgment-debtor for sufficient cause shown to order the postponement or payment of the amount decreed by installment.

There must be sufficient cause shown by the judgment-debtor before the court can order the postponement of payment or payment by instalment. The reasons offered by the applicants in this application are that they have no means to pay the decretal sum as they are mostly retirees.

In response to this the respondents have sworn an affidavit in which they have listed the source of income of each applicant. Although the applicants filed a supplementary affidavit they did not contradict those averments apart from a general statement that they do not have the means.

It would appear from the manner in which the applicants have brought one application after another that they are not about to relent in engaging the court and the respondents. Judicial time is extremely scarce and must only be taken up by serious litigation. I intent to say no more.

In the result, I find no merit in this application which I hereby dismiss with costs to the respondents.

Dated and delivered at Meru this 20th day of January 2009.

W. OUKO

JUDGE