



REPUBLIC OF KENYA



**Kimanthi & another v Kiamba (Environment & Land Case
13B of 2014) [2025] KEELC 1150 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1150 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 13B OF 2014**

AY KOROSS, J

MARCH 11, 2025

BETWEEN

ESTHER KAMENE KIMANTHI 1ST JUDGMENT DEBTOR

LYDIA KATILO MULWA 2ND JUDGMENT DEBTOR

AND

CRISPUS MAKAU KIAMBA DECREE HOLDER

RULING

Judgment debtors' case

1. This ruling seeks to determine the notice of motion that has been moved under several provisions of law, and it is dated 26/11/2024. It seeks numerous reliefs from this court, some of which are spent, and the residual prayers for determination are: -
 - a. That this Honourable Court be pleased to allow the judgment debtors to liquidate the decretal sum in monthly instalments of Kshs. 20,000/= until payment in full with effect from 31/1/2025.
 - b. That the court does grant any other or such further orders to meet the ends of justice.
 - c. That the cost of this motion be costs in the cause.
2. The motion is supported by the grounds set out on the body thereof and the supporting affidavit of the 1st judgment debtor who had the authority of the co-judgment debtor. This affidavit is deposed on 26/11/2024.
3. In brief, it was contended a notice to show cause (NTSC) had been issued against them for the decretal sum of kshs. 455,176/=. She stated that although she was privy they were to settle this amount, they could only settle them in monthly instalments of kshs. 20,000/=.



4. Moreover, the 1st judgment holder asserted she was an elderly widow of 80 years who conducted subsistence farming for a living and stated that this court's jurisdiction to entertain the motion is derived from Order 21 Rule 12 of the [Civil Procedure Rules](#). They urged this court to allow the motion.

Decree holder's case

5. The motion was opposed by the decree holder's grounds of opposition dated 19/12/2024 and replying affidavit of even date that was sworn by his advocate on record, Mr Muema Kitulu. He raised the following grounds in opposition: -
 - a. The motion was fatally defective as it was premised on irrelevant provisions of law that did not align with the reliefs sought.
 - b. The motion was undeserving of the exercise of this court's discretion in favour of the judgment debtors.
 - c. The motion is an afterthought, and the judgment debtors have not come to court with clean hands, as a similar application to set aside the taxed costs was dismissed by this court.
 - d. The motion was brought in bad faith, frivolous and an abuse of the court process.
 - e. The motion dated 26/11/2023 should be dismissed with costs.
6. In the replying affidavit, Mr Muema asserted the decree-holders had never made any attempts to settle the decretal sum and the motion was filed merely to forestall the pending notice to show cause, that in the pleadings, one of the judgment debtors had asserted she was a commercial farmer of repute, and the decree-holder should be allowed to enjoy the fruits of the judgment.

Parties' submissions

7. The court directed parties to file written submissions arguing their respective cases.
8. In compliance, the judgment debtors' law firm on record M/s. Mulu & Company Advocates did file written submissions dated 18/01/2025. In them, counsel framed one issue for determination: whether the plaintiffs/judgment debtors had met the threshold to warrant the grant of the orders sought.
9. Additionally, the decree holder's law firm on record M/s. Muema Kitulu & Company Advocates filed written submissions dated 21/01/2025. By it and in relying on the grounds of opposition and replying affidavit, counsel argued the motion was not merited.
10. Therefore, upon identifying and considering the issues for determination, this ruling shall, later on in its analysis and determination, consider the arguments contained on the particular issue and also bear in mind the law and judicial precedents.

Issues for determination.

11. I have carefully considered the motion, its grounds, affidavits and submissions and the following issues arise for resolution: -
 - a. Whether the motion is merited.
 - b. What orders should this court issue, including an order as to costs?



Analysis and Determination

12. As the outcome of issue (b) flows from the findings of issue (a), these two issues shall be handled together.
13. The authority by which this court can entertain the motion is founded in Order 21 Rule 12 of the [Civil Procedure Rules](#) (CPR), and from the face of the motion, it is evident the judgment debtors properly moved this court. This provision of the law states 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 judgment or 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.”
14. This proviso allows this court, upon an application being made to it as the judgment debtors have done, to exercise its judicious discretion based on law and reason.
15. In doing so, this court can disallow the application or order the payment of the decretal sum to be postponed or for its payment in instalments.
16. Of significance is that in considering the exercise of discretion, the judgment debtors must demonstrate they have tendered sufficient cause to warrant the grant of orders in their favour.
17. In breathing life into this provision of law, the persuasive decision of [Freight Forwarders Ltd v & Elsek Ltd](#) (2012) eKLR that has been relied upon by the judgment debtors’ counsel expounded on the meaning of sufficient cause, which this court adopts.
18. This decision considered the following guiding principles, which were drawn from various case law: -
 - 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 the exercise of 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.
 - e. The court can consider the circumstances in which the debt was incurred, the conduct of the debtor, his financial position, and his bona fides.



19. It has been observed by this court that these principles were reiterated in the persuasive decision of *KTK Advocates v Baringo County Government* [2018] eKLR that has been relied upon by the decree holder's counsel in buttressing his arguments.
20. Now, in the circumstances of this case, the reasons advanced by the 1st judgment debtor as to why discretion should be exercised in her favour are that she is old, unemployed and a subsistence farmer.
21. From the replying affidavit, Mr. Muema only discredits these averments to the extent that, according to the pleadings, the 1st judgment debtor was a commercial farmer. Nevertheless, Mr. Muema did not guide the court to the particular pleading he was referring to.
22. As for the 2nd judgment holder, nothing has been heard from her other than the 1st judgment debtor had authority from her to swear the affidavit.
23. Thus, it can only be concluded that she is a person of means and capable of settling the decretal sum.
24. It is my understanding that the decretal sums can be settled by either or both of the judgment debtors, and though the 1st judgment has advanced convincing reasons as to why discretion should be exercised in her favour, it appears the 2nd judgment debtor is capable of settling part of the decretal sum.
25. Consequently, and on this basis, I hereby find the notice of motion dated 26/11/2024 is merited, and costs shall be borne by the judgment debtors. In exercise of my judicious discretion, I hereby issue the following disposal orders:
 - a. The judgment debtors shall pay to the decree holder a lump sum of Kshs. 200,000/= by 12/05/2025.
 - b. The balance shall be paid in equal monthly instalments of Kshs.20,000/= starting from the 30/06/2025 and on the 30th of each succeeding month until payment in full.
 - c. In default of (a) and (b) above, the decree holder shall be at liberty to execute the decree and/or liberty to apply.
 - d. Costs to the decree holder.

Orders accordingly.

DATED AT MACHAKOS THIS 11TH DAY OF MARCH, 2025

HON A. Y. KOROSS

JUDGE

11. 03.2025

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In the presence of;

Mr. Kitulu for defendant/decreed holder

Mr Njuguna holding brief for Mr. Mulu for the plaintiffs/ judgment debtors.

Ms Kanja- Court Assistant

