



**Shira v Kiptingos (Environment and Land Appeal E002 of 2022)
[2025] KEELC 4408 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4408 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E002 OF 2022**

MN MWANYALE, J

JUNE 12, 2025

BETWEEN

KOIDUNGU OLE SHIRA APPELLANT

AND

JULIUS L KIPTINGOS RESPONDENT

RULING

1. In his Application dated 22.01.2025 the Applicant Mr. Koidungu Ole Shira seeks to pay the decretal sum of Kshs.231,500 arising from a certificate of costs by monthly instalments of Khs.5,000 till payment in full.
2. The grounds in support of the application is that the Applicant is unable to pay the entire amount.
3. Application is supported by his supporting affidavit in which he reiterates the ground in support of the application and beseechs the court to accept the depositions as affidavits of means, since he is not employed but a small-scale subsistence farmer and he sought stay of execution in order to make the necessary payment.
4. The Respondent filed grounds of opposition in which they state interalia that:
 - i. The proposed payment of Khs.5,000 per month is wholly inadequate and unreasonable for clearing the same.
 - ii. No payments had been made by the Applicant despite having been granted a stay of execution which expired on 15th December 2024.
 - iii. No evidence has been provided to support the claim that the Applicant is unable to pay the entire amount in one instalment due to hardship.



5. Undeterred the Applicant filed a further affidavit in which he annexed a letter from the chief showing that he earned meagre earnings.
6. Parties were directed to file submissions in respect of the Application.
7. Upon consideration of the submissions filed the parties, the court frames the sole issue for determination as to whether or not the application is merited?

Analysis and Determination.

8. In *Botanics Kenya Limited V. Esign Food (K) Limited* (2016) eKLR, the court reviewed authorities on the payment of decretal sum by instalments. The court in *Rajabali Alidina Vs. Remtila Alidina* stated that “the court’s discretion to order payment of decretal amount in instalments is one of which must be exercised in a judicial and not an arbitrary manner. The onus is the defendant to show that is entitled to indulgence under this Rule.”
9. In *Freight Forwarders Vs. Elsek and Elsek Ltd* the court considered sufficient cause under Order 21 Rule 12, and narrowed the same to include the following
 - “(a) debtor is unable to pay in lumpsum.
 - (b) debtor can pay by reasonable monthly instalments.
 - (c) The application is made in utmost good faith.”
10. The court shall apply the following in consideration of the exercise of its discretion in this application.
11. The Applicant has exhibited a letter from chief indicating that he cannot pay the decretal sum in one off payment and the court views the letter as one having been tailor made for purposes of this application and to that extent, the applicant has not demonstrated inability to pay the decretal sum, wholly.
12. The court is in Agreement with the Respondent that the proposed payment plan by the Applicant is ridiculously low and hence not reasonable; and the application in view of the payment proposal is not made in good faith.
13. The Applicant has not satisfied the conditions of sufficient cause as stated in the *Freight Forwarders* case; but taking into account the general hardship and hard economic times, the court allows the application in the following terms.
 1. There shall be a stay of execution of the certificate of taxation herein, dated 15th November 2024 and other consequential orders.
 2. The Appellant/Applicant shall pay the decretal sum by paying a deposit of Khs. 81,500/= within 60 days from today.
 3. Thereafter the Applicant shall pay a monthly instalment of Kshs.30,000 till payment in full.
 4. In default of any instalment the balance shall become due and owing and the Respondent shall be at liberty to execute.
 5. Costs of the Application are awarded to the Respondents in any event.

DATED AT KILGORIS THIS 12TH DAY OF JUNE, 2025.

HON. M.N MWANYALE

JUDGE



In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Koome for the Appellant/Applicant

Ms. Masheti h/b for Mr. Kethi for the Respondent

