



**Wangombe v Nyamu (Land Case 123 of 2023)  
[2024] KEELC 13421 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13421 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
LAND CASE 123 OF 2023  
YM ANGIMA, J  
NOVEMBER 7, 2024**

**BETWEEN**

**SAMUEL M WANGOMBE ..... PLAINTIFF**

**AND**

**CHARLES MURIITHI NYAMU ..... DEFENDANT**

**RULING**

1. By a notice of motion dated 20.08.2024 expressed to be brought pursuant to Sections 1A, 1B & 3A of the *Civil Procedure Act* (Cap.21), Order 22 rule 22 and Order 51 of the Civil Procedure Rules, Article 159 of the *Constitution* and all enabling provisions of the law, the Defendant sought a stay of execution of the decree and leave to liquidate the decretal amount by instalments until payment in full. The Defendant pleaded that the Plaintiff had threatened him with execution of the order for payment of costs and had in that regard issued a notice to show cause why he should not be committed to civil jail for failure to pay the decretal amount.
2. The application was supported by the affidavit sworn by the Defendant on 20.08.2024 and the further affidavit sworn by him on 14.10.2024. The Defendant contended that he was unable to raise the entire decretal amount in one lumpsum due to his advanced age and medical condition. He pleaded that he was undergoing treatment for diabetes and hypertension hence his inability to settle the decretal amount at once. He stated that he was ready and willing to liquidate the decretal amount by instalments on 10.09.2024, 10.12.2024, 10.02.2025 and 10.04.2025 and that he had already paid the first instalment of Kshs.70,000/= on 10.09.2024.
3. It was the Defendant's case that he stood to suffer substantial loss and damage if the Plaintiff were to execute for the decretal amount due to his medical condition. It was further contended that the Plaintiff shall not suffer any prejudice if the instant application was allowed.



4. The Plaintiff filed a replying affidavit sworn by his advocate on record, Mr. Nderitu Komu, on 11.09.2024 in opposition to the said application. It was contended that the issue of the Defendant's medical condition was merely an afterthought since it was never raised in the Defendant's earlier application for leave to file a reference on costs out of time. It was further stated that the proposed payment period was too long and unreasonable. The Plaintiff was willing to accept payment by instalments within a period of 3 months only. It was the Plaintiff's contention that the instant application was merely a delaying tactic intended to delay payment of the due costs.
5. When the application was listed for inter partes hearing, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Defendant's submissions were filed on 28.10.2024 whereas the Plaintiff's submissions were not on record by the time of preparation of the ruling.
6. The court has considered the Defendant's notice of motion dated 20.08.2024, the Plaintiff's replying affidavit in opposition thereto and the Defendant's further affidavit. The court has also considered the submissions and material on record. The court is of the view that the main question for determination is whether the Defendant has made out a case for payment of the decretal amount by instalments.
7. The court is satisfied that the Defendant has demonstrated that he is undergoing medical treatment for diabetes and hypertension and that he has made some effort to pay at least one instalment of Kshs.70,000/= to the Plaintiff. The material on record shows that the Plaintiff has applied for a notice to show cause why the Defendant should not be committed to civil jail for failure to pay the decretal amount.
8. The court is of the opinion that the Defendant has demonstrated good faith by offering to pay the decretal amount by instalments and by actually making payment of the first instalment of Kshs.70,000/=. The court is further of the opinion that the proposal to liquidate the decretal amount by 4 instalments spread over a period of 8 months is not so unreasonable as to amount to a denial of justice. The Plaintiff shall still get his costs paid in full together with interest. As a result, the court is inclined to allow the Defendant's application for leave to pay by instalments.
9. In the circumstances, the court makes the following orders for disposal of the notice of motion dated 20.08.2024:
  - a. Leave be and is hereby granted to the Defendant to liquidate the decretal amount by 4 instalments as follows:
    - i. On 10.09.2024 (now past)
    - ii. On 10.12.2024
    - iii. On 10.02.2025
    - iv. On 10.04.2025
  - b. Should the Defendant default on payment of any instalment by the due date, the entire amount then outstanding shall become immediately due and payable and the Plaintiff shall be at liberty to proceed with execution for recovery thereof.
  - c. No execution shall proceed against the Defendant for as long as he meets his obligation on payment by instalments.
  - d. The Plaintiff is hereby awarded costs of the application.



Orders accordingly.

**RULING DATED AND SIGNED AT NYANDARUA THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

**In the presence of:**

Mr. Nderitu Komu for the Plaintiff

Ms. Oseko for the Defendant

C/A - Carol

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**Y. M. ANGIMA**

**JUDGE**

