



Bruce Odeny & Co Advocates v MCTough (Environment and Land Miscellaneous Application E018 of 2022) [2023] KEELC 21212 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21212 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E018 OF 2022**

E ASATI, J

NOVEMBER 2, 2023

BETWEEN

BRUCE ODENY & CO ADVOCATES ADVOCATE

AND

WILIAM ROMAN MCTOUGH CLIENT

RULING

1. This ruling is in respect of the Notice of Motion application dated 4th September, 2023 brought pursuant to the provisions of Section 1A, 1B, 3A of the *Civil Procedure Act* and Order 11 Rule 3(h) and Order 21 Rule 12 of the *Civil Procedure Rules*.
2. The application seeks for orders for;
 - a. the arrest of delivery of the Ruling pending before this court in ELC Misc. Civil Appl. No E006/2022 which is scheduled for 22nd November, 2023.
 - b. the consolidation of the Miscellaneous Applications pending before this court for hearing namely;
 - i. ELC Misc. Civil Appl. No E018/2022
 - ii. ELC Misc. Civil Appl. No E034/2021
 - iii. ELC Misc. Civil Appl. No E001/2022
 - iv. ELC Misc. Civil Appl. No E003/2022
 - v. ELC Misc. Civil Appl. No E031/2021for purposes of payment of the outstanding Certificates of Taxation.



- c. payment of the Advocate's certificate of taxation issued herein by way of instalments of Kshs 50,000/- per month till payment in full.
 - d. that costs of the application be in the course.
3. The application was based on the grounds on the face of the Notice of Motion and supported by the averments in the Supporting Affidavit sworn by the Applicant William McTough on 4th September, 2023. It is the Applicant's case that the relationship between him and his former Advocates, the Respondent herein, broke down and that his former Advocates are claiming their professional fees. That as a hotelier, he is facing economic hardship and is unable to pay the sums claimed in a lump sum.
 4. The application was opposed vide the contents of the Replying Affidavit sworn by Bruce O. Odeny Advocate on 15th September, 2023.

The Respondent's case is that the Applicant owns sufficient means to be able to settle the outstanding professional fees as demanded at once. That the taxed costs for all the files sought to be consolidated amount to Kshs 2,111,013.74 and that if the Applicant was to be allowed to pay by instalments of Kshs 50,000/- as proposed, it will take about five (5) years to complete. That the Respondent is only willing to accept payment by instalments if the same is done by two (2) instalments.

5. The application was argued orally on 4th October, 2023.
6. I have considered the application, grounds upon which it was brought, the Supporting Affidavit and Replying Affidavit. I have also considered the oral submissions made by Counsel appearing.

It is agreed that the total outstanding balance in respect of all the applications is Kshs 2,111,013 and in this particular matter, Kshs 393,011.

The law on payment of sums by instalments is found in Order 21 Rule 12. Under that law sufficient cause must be shown for the court to exercise its discretion to allow the judgement debtor to liquidate the decree by instalments.

7. Firstly, as it is agreed on the balance outstanding in respect of the files listed in the application, an order for consolidation of those files for purposes of payment, is in my view expedient. Secondly, I note that the ruling whose delivery the court is being invited to arrest is not pending before this court and the file in respect thereof not one of the matters sought to be consolidated.
8. Counsel for the Respondent submitted that the Respondent is willing to accept payments by two instalments.
9. Taking into account all the circumstances of this matter, I find that the prayer for arresting of the Ruling scheduled for 22/11/2023 is not merited. However, the prayer for consolidation of the matters and for payment of the decretal sum by instalment is valid. I allow the application dated 4th September, 2023 on the following terms;
 - a. The agreed balance of the decretal sum in the matters listed in the application amounting to Kshs 2111, 013.74 be liquidated by the applicant by five (5) equal monthly instalments with effect from 15th November, 2023 and thereafter on the 15th day of each succeeding month till payment in full. In default, execution to issue.
 - b. Costs of the present application to the Respondent.

Orders accordingly.



RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 2ND DAY OF NOVEMBER 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Kibiti for the Advocates/Respondents.

Murgor for the Applicant.

