



REPUBLIC OF KENYA



KENYA LAW
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**Ndungu & another v Molyn Credit Limited & 4 others (Environment & Land
Case 658 of 2016) [2023] KEELC 21326 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21326 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 658 OF 2016
AA OMOLLO, J
NOVEMBER 2, 2023**

BETWEEN

DANIEL KABIRU NDUNGU 1ST PLAINTIFF

LUCY NYAMBURA KABIRU 2ND PLAINTIFF

AND

MOLYN CREDIT LIMITED RESPONDENT

AND

WILSON KARIUKI T/A WISKAM AUCTIONEERS 1ST DEFENDANT

LAND REGISTRAR 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

NAIROBI CONNECTION SERVICE AUCTIONEERS 4TH DEFENDANT

RULING

1. For determination is the Notice of Motion application dated 26th June, 2023 by the 1st Plaintiff and brought under the provisions of article 159(2)(b) of the Constitution. The 1st Plaintiff/Applicant seeks the following orders;

1. Spent

2. Spent

3. That this Honourable Court be pleased to grant leave to the Applicant to liquidate the judgment sum awarded to the 1st and 2nd Respondents herein being Kshs.5,368,933/= in instalments of Kshs.2,500,000 payable by 10th July, 2023, Kshs.1,500,000 payable by 10th December, 2023 and Kshs.2,368,933 payable by 10th June, 2023.



4. Spent
 5. That this Honourable Court be pleased to issue any Other Order as may seems just.
 6. That the cost of this Application be borne by the Claimant/Respondent.
2. The application is supported by several grounds listed on its face which include;
- a. It is an extremely difficult obligation to pay all that money in lumpsum, which is quite enormous due to the business economic constraints being experienced by the Applicant herein.
 - b. Due to financial constraints and given the magnitude of the obligation, the Applicant is willing to enter into a consent with the 1st and 2nd Respondents to be allowed to settle the decretal sum in installments.
 - c. It is in the interest of justice that the Applicant be accorded reasonable time to liquidate the debt by making contributions according to its financial capability.
 - d. Unless the reliefs sought are granted, the 1st and 2nd Respondents will proceed to attach and sell the Applicant's movable property known as Ngong/Ngong/34016 to be detriment of the Applicant herein and this application will be rendered nugatory and an academic exercise of no legal consequence.
3. In a Replying Affidavit dated 12th July, 2023, the Respondent deposes that the Applicant cannot use the court to prevent himself from satisfying its debt which has taken 8 years and which keeps accruing interest. That the applicant should acknowledge that their situation is beyond salvage and should in determining the matter with finality instead of filing frivolous applications.
4. The applicant filed written submissions dated 14th August, 2023 in urging the court to grant him leave to settle the decree in instalments, the Applicant relied on the provisions of Order 21 rule 12(2) of [*Civil Procedure Rules*](#) which states thus;
- “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 t
5. He also cited the case of *Nicholas Gitonga Murongi v Susan Wairimu & 4 Others* [2021] eKLR which also quoted *Rajabali Alidina v Remtulla Atidina & Another* [1961] EA 565. The two cases held that to grant an order to settle the decretal sum in instalments, the court is guided by the following;
- a. Circumstances under which the debt was contracted.
 - b. Conduct of the debtor
 - c. His financial position
 - d. His bonafides in offering to pay a fair proportion of the debt at once.
6. As at the time of writing this Ruling, the Applicant ought to have paid a sum of Kshs.2.5 million as directed during the proceedings of 13th July, 2023. The gist of the application is whether or not to grant the order of liquidating the decretal sum by instalments in the manner proposed by the Applicant. The Decree holder argued that the Applicant is using the court to prevent himself from paying the decree.



7. In consideration of the principles referred to in the case of *Nicholas Murongi vs Susan Wairimu* cited by the Applicants, he fails the first two tests. I find so because from the time the decree of this honourable court was issued on 23rd September, 2021, the Applicant has never made effort to settle the decree. However, he has now shown good faith offering to pay a reasonable deposit of Kshs.2.5M and which amount is presumed paid as at the date of this ruling. The current economic hardships in this Country referred to as ground by the Applicant affects all Kenyans and their businesses and cannot be a basis to cause a disadvantage to the 1st defendant/decree holder.
8. I have taken all the issues raised by both parties into perspective especially that the Applicant offered to settle the decree after the 1st defendant had commenced the process of selling the suit property Ngong/ Ngong/34016. However, to have this matter settled on a win-win basis, I will allow the liquidation of the decretal sum in instalments on the following terms.
- a. Kshs. 2.5 million is deemed as already paid as of today. In the event the Applicant has not paid, the payment shall be made forthwith otherwise it is considered as a default.
 - b. Kshs. 1.5 million to be paid on or before 10th December, 2023.
 - c. The balance to be paid on or before 10th April, 2024.
 - d. Costs of this application to the 1st Defendant/decree holder
 - e. In default of any one instalment, the Decree holder at liberty to execute for the balance.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF NOVEMBER, 2023

A. OMOLLO

JUDGE

