



**Kimani v Kimani (Environment & Land Case 824 of 2017)
[2022] KEELC 13258 (KLR) (5 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13258 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 824 OF 2017
BM EBOSO, J
OCTOBER 5, 2022**

BETWEEN

KASAMA KIMANI PLAINTIFF

AND

JANE WANGECHI KIMANI DEFENDANT

RULING

1. This court rendered a judgment in this suit on May 12, 2022. The court disposed the suit in terms of the following orders:
 - a. The plaintiff's claim for an order of specific performance relating to parcel number Sigona/932 is rejected on the ground that there was no compliant, valid and enforceable land sale contract relating to parcel number Sigona/932.
 - b. The defendant is decreed to refund to the plaintiff the purchase price paid to her in the sum of Kshs 700,000 together with interest at court rate from May 1, 2009 till the money is paid in full.
 - c. Parties shall bear their respective costs of the suit.
2. On or about June 23, 2022, the defendant [the judgment debtor] brought a notice of motion dated June 23, 2022 seeking the following post-judgment orders:
 1. That the application be certified urgent and be heard *ex parte* in the first instance.
 2. That the honourable court be pleased to stay the execution of the judgment entered on May 12, 2022 and all other consequential orders thereof pending the hearing and determination of this application inter partes.
 3. That the honourable court be pleased to order that pending the hearing and determination of the application inter partes the principal amount (Kshs 700,000) be deposited in court.



4. That the honourable court be pleased to set the amount of interest due on the principal amount from May 1, 2009 to the date the cheques were rejected; June 21, 2022.
 5. That the honourable court be pleased to assess and determine interest payable and allow the interest due to be paid in monthly instalments.
 6. That costs of this application be provided for.
3. When the application came up for hearing on September 20, 2022, Mr Gicheha Kamau, counsel for the judgment debtor, submitted that the judgment debtor was only interested in prayer 3 and the limb of prayer 5 that relates to payment of the decreed interest in monthly instalments. He submitted that the court registry had already tabulated the interest payable to the decree holder. Prayer 3 is a plea for leave to deposit the principal award of Kshs 700,000.
 4. The application was supported by the judgment debtor's affidavit sworn on June 23, 2022. She deposed that she forwarded to the decree holder's advocates the principal award but the forwarded cheques were rejected. She added that the decree-holder had unprocedurally terminated the services of his advocates post judgment and was inaccessible. She added that owing to the "prevailing economic situation, high cost of living, uncertainty in source of income, and low purchasing power" it had become difficult for her to dispose off some assets to raise the decretal sum as a lump sum. She added that as a sign of good will, she was ready to deposit the principal award in court for onward release to the decree holder.
 5. The decree holder opposed the application through a replying affidavit sworn on September 7, 2022. He deposed that the principal award together with interest amounted to approximately Kshs 1,813,000 at the time of swearing the affidavit. He added that although the suit property had appreciated in value, he had elected to accept the verdict of the court so as to bring this litigation to an end. He contended that the application was a ploy to review the judgment of the court. He added that "justice delayed is justice denied". He urged the court to reject the application.
 6. I have considered the application together with the response to the application. I have also considered the oral presentations made to the court by the respective parties. Two questions fall for determination in the application. The first question is whether there is a proper basis as to why the judgment debtor should be allowed to deposit the principal award in court for onward transmission to the decree holder. The second question is whether there is a proper basis upon which the court would exercise discretion and allow the judgment debtor to pay the decreed interest in monthly instalments. I will make brief simultaneous pronouncements on the two questions.
 7. The judgment debtor contends that he sent to the decree holder's advocates two cheques totaling Kshs 700,000 in settlement of the principal award. The two cheques were returned to the judgment debtor's advocates. He further contends that the decree holder subsequently filed a notice to act in person, without seeking prior leave of the court or consent of his advocates on record. It is the case of the judgment debtor that the decree holder has since then been inaccessible. On his part, the decree holder contends that he instructed his advocates on record to return the cheques because he wanted the decretal sum to be paid as a single payment.
 8. On the plea to be allowed to settle the decreed interest in monthly instalments, the judgment debtor alludes to "prevailing economic situation, high cost of living, uncertainty in source of income and low purchasing power" as the reasons why she cannot settle the interest in a single payment. On his part, the decree holder contends that the application is a plea for a review of the judgment of the court.
 9. This case has been in court since 2010. The judgment debtor received the purchase price relating to the aborted land sale agreement in April 2009. The decree holder has been deprived the use of the money



for the last 13 years. To Keep the decree holder waiting for an unspecified period of time would be unfair. The justice of this case requires that the judgment debtor settles the decreed amount without further delay.

10. In the circumstances, I will allow the judgment debtor's plea to deposit the sum of Kshs 700,000 in court immediately for immediate release to the plaintiff. The decreed interest shall be paid in two equal monthly instalments on or before November 5, 2022 and on or before December 5, 2022 respectively. In default, the decree holder/plaintiff shall be at liberty to execute.
11. For avoidance of doubt, the notice of motion dated June 23, 2022 is disposed in the following terms:
 - a. The defendant shall within three working days deposit in this Court the principal award of Kshs 700,000 together with any court handling charges and bank charges.
 - b. The said sum shall thereafter be released to the plaintiff forthwith.
 - c. In addition, the defendant shall deposit in court the decreed interest in two equal monthly instalments on or before the November 5, 2022 and on or before the December 5, 2022 respectively.
 - d. The moneys in (c) above shall be released to the plaintiff as soon as they are deposited in court.
 - e. In default of compliance by the defendant, the plaintiff shall be at liberty to execute.
 - f. Parties to bear their respective costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 5TH DAY OF OCTOBER 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Kasama Kimani plaintiff in person

Mr Gicheha Kamau for the Defendant

Court Assistant: Sydney

