



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**ELC CASE NO. 46 OF 2003**

**JOHN WEPUKHULU.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**JOHN TANUI.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**SUSAN TANUI.....3<sup>RD</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**PETER MWEGA.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**MWIRERI GICHERU.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

1. The applicant brought an application dated **12/3/2018** seeking the following orders:-

**(a) That pending the inter partes hearing of this application, there be a stay of execution of the judgment and/or decree and/or stay of proceedings in this suit as well as of all or any other consequential orders.**

**(b) That as the inter partes hearing of this application, the defendants/applicants be allowed to defray the decretal sum of money herein by way of monthly instalments of Kshs.20,000/- with effect from 1<sup>st</sup> April, 2018 till payment in full.**

**(c) That costs be provided for.**

2. The grounds upon which the application is brought are that the plaintiffs obtained judgment in their favour and were awarded costs thereof; that although the defendants were aggrieved by the said judgment and did prefer an appeal, there is no stay of execution of the decree; that the defendants may be committed to civil jail for non-payment of costs ordered by the court and that defendants cannot raise the entire decretal sum in lumpsum and can only manage to do so by way of instalments hence this application.

3. The respondents filed ground of opposition on **22/3/2018**. In those grounds the respondents aver that the a successful litigant is entitled to the fruits of the court's judgment, that the applicants are still occupying the plaintiff's parcels of land despite the judgment, that the payment of the decreed costs at the rate of kshs.20,000/= per month is economically unreasonable and unacceptable to the respondent and that the application is brought mala fides since nothing has been paid since 11<sup>th</sup> January when the certificate of costs was issued. Further the respondent thinks that the applicants have not demonstrated any sufficient cause to the satisfaction of the court for the exercise of its discretion under **Order 21 Rule 12** of the **Civil Procedure Rules**.

4. However following an order of this court made on 9/4/2018, in an affidavit of Katama E. Ngeywa, Advocate filed on 21/5/2018 he has shown that at least Kshs 40,000/= has been deposited with the respondent's counsel in partial defrayment of the outstanding costs in the suit.

5. I have examined the provisions of **Order 21 Rule 12(1)** and **(2)**. It appears that from the provisions this court has power to order payment of an amount decreed be postponed or be made by way of instalments, lack of consent of the decree holder notwithstanding. The court is also at liberty to impose any terms it thinks fit upon granting an order of postponement of the payment or payment by instalments.

6. In this case the court has considered that the amount of money claimed from the applicants as costs is in the sum of Kshs. 209,900/=. As I have already stated the sum of Kshs.40,000/= has been shown to have been paid to the respondent's counsel and that is a sign of willingness to settle the outstanding sum. The outstanding sum is Kshs.169,900/which is now the subject of the proposal for instalments.

7. This court has considered the circumstances in which the suit herein came to be instituted and the applicant's plea is that they can not afford the lumpsum payment of the amount sought. I find that the application has merit. I also find that it would be good to moderate the amount proposed so as to be fair to the opposing parties. In doing this I have noted that there is really no keen opposition raised by the respondent to the allegation that the applicants have no ability to remit the costs claimed in a lumpsum.

8. For that reason, I order that there shall be a stay of execution in this matter pending completion of payment of the costs by way of instalments, and the applicants shall defray the outstanding costs in monthly sums of **Kshs 30,000/=** beginning the month of July 2018 till payment in full. The due date for payment for each month after July shall be the 3<sup>rd</sup> day of each subsequent calendar month. In default of compliance execution shall issue for the whole amount that may be found outstanding as at the time of default.

In addition, the costs of this application shall be borne by the applicants.

Dated, signed and delivered at Kitale on this **2<sup>nd</sup>** day of **July, 2018**.

**MWANGI NJOROGI**

**JUDGE**

**2/7/2018**

Coram

Before: Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bororio holding brief for Samba for Respondents

N/A for the Applicants

**COURT**

Ruling read in open court.

**MWANGI NJOROGI**

**JUDGE**

**2/7/2018**