



**Joseph v Barnabas & another (Commercial Appeal E236 of 2023)
[2025] KEHC 389 (KLR) (Commercial and Tax) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 389 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E236 OF 2023
PM MULWA, J
JANUARY 23, 2025**

BETWEEN

SHOLASTICAH NZILANI JOSEPH APPELLANT

AND

VICTOR BARNABAS 1ST RESPONDENT

ELISHA JOHN BWASHI 2ND RESPONDENT

RULING

1. Before the court is the appellant's Notice of Motion application dated 28th September 2023 filed pursuant to Order 51 Rules 1 and 3, Order 21 Rule 12 and Order 42 Rule 6 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the [Civil Procedure Act](#).
2. In prayer 3 of the application, the appellant seeks for orders that: pending the hearing and determination of the appeal herein the court do grant a conditional stay of execution of the decree in Nairobi SCCOMM No. E4495 of 2023 subject to the appellant paying the respondents a monthly instalment of Kshs. 10,000/- towards settling the decretal sum.
3. The basis of the application is that in the lower court, the appellant had applied to liquidate the decretal sum at a monthly sum of Kshs. 10,000/- which application was dismissed hence the appeal herein.
4. The respondent argued that the application was an abuse of the court process as the appellant had refused to comply with the initial orders of this court which required that she pays a sum of Kshs. 100,000/- within 21 days of 3rd October 2023 and thereafter Kshs. 20,000/- every month starting from 24th October 2023.
5. The respondent argued that the proposal by the appellant to pay Kshs. 10,000/- per month would take about 58 months to clear the decretal sum of Kshs. 581,000/- and that was not economically beneficial.



6. The parties respectively filed brief written submissions, for the appellant dated 2nd August 2024 and for the respondent dated 17th August 2024, which the court has considered alongside the pleadings.
7. It is worthy to note that the orders for conditional stay made on 3rd October 2023 were set aside by the court on 15th October 2023 after non-compliance by the appellant. The respondent submitted that the appellant, having disobeyed court orders is not entitled to the orders sought.
8. On her part the appellant submitted that she has shown the willingness to settle the decretal sum by paying a total sum of Kshs. 220,000 to the respondent's advocates, and went on to propose payment of the balance by monthly instalments of Kshs. 30,000/-.
9. Let me state that this is a simple matter which has taken long in court because of what I would say is indecisiveness on the part of the appellant on whether she wants to pursue the appeal or seek time to settle the decretal sum. The conduct by the appellant may or may not be deliberate, and I would not wish to entertain further delays in the matter.
10. Consequently, in order to pave way for an expedited hearing and determination of the appeal herein, I issue the following orders:
 - i. Stay of execution is granted on condition that within 60 days from the date of this ruling the appellant will avail to the respondents' proof of the amounts paid to date.
 - ii. Upon ascertainment, the balance of the decretal amount to be deposited in an interest earning account in the joint names of advocates for both parties.
 - iii. In default execution to ensue.
 - iv. Parties to set matter for mention for directions on the appeal.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF JANUARY 2025.

P.M. MULWA

JUDGE

In the presence of:

Mr. Sala for Appellant

Mr. Munoko for Respondents

Court Assistant: Carlos

