



REPUBLIC OF KENYA



**Chairperson, Secretary & Treasurer Board of Management Elite Girls
Bumamu Secondary School v Namonywa t/a Benamos E Africa (Civil
Appeal E078 of 2023) [2025] KEHC 10229 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E078 OF 2023
S MBUNGI, J
JULY 16, 2025**

BETWEEN

**THE CHAIRPERSON, SECRETARY & TREASURER BOARD
OF MANAGEMENT ELITE GIRLS BUMAMU SECONDARY
SCHOOL APPELLANT**

AND

BEN OLUBAKAYA NAMONYWA T/A BENAMOS E AFRICA RESPONDENT

RULING

1. This is a ruling on a notice of motion dated 12.5.2025 brought by the applicant based under Section 43,53,86,87 and 88 of the *basic Education Act*, Section 1A,1B and 63 (e) of the *Civil procedure Act*, Order 51 Rule 1 , Order 12 (1) and (2) and Order 22 Rule 25 of the *Civil procedure Rules* and all other enabling provisions of law.
2. The applicant seeks to be allowed to settle the decretal amount , costs and interest of Ksh. 552,565/= plus costs of this appeal (not yet assessed) by paying termly and or quarterly instalments until payment of the dire amount, costs and interest as follows:-
 - a. Sum of Kshs 100,000/= be paid within 1st term.
 - b. The sum of Kshs. 50,000/= be paid withing 2nd term.
 - c. The sum of Khs. 50,000/= be paid within 3rd term.
3. The application is supported by the supporting affidavit sworn by Dorine Wamalwa on 12.5.2025.
4. The respondent opposed the application and filed a replying affidavit sworn by Ben Olubakaya Namonywa on 3.6.2025 .



5. The application came for hearing on 12.6.2025 . the counsel for the respondent attended court but the counsel for the applicant did not attend court.
6. The respondents counsel requested the court to render a ruling on the application based on the pleadings on the record.
7. I have looked at the application , the grounds in support and supporting affidavit and replying affidavit.
8. The history of this matter is that a judgment was entered against the applicant on 20.4.2023 in Butere PMCC No. E001 of 2022. the applicant was dissatisfied with the judgment and preferred an appeal against the judgment in Civil Appeal No. E078 of 2023 via Judgment delivered on 8.4.2025 the appeal was dismissed .
9. Then thereafter the applicant filed the present application.
10. The issued for determination is whether the applicant has made out a case to warrant the granting of the orders sought.
11. The applicant in support of its application avers that they have already given a proposal to the respondent on how to settle the amount and even they have forwarded a cheque of Ksh 50,000/= to the respondent but the respondent has never responded to their proposal.
12. The applicant further avers that they have no financial capacity to pay the decretal amount at once since they depend on national government financing where money is disbursed on quarterly or termly basis.
13. Further that the money disbursed is also applied for purposes of day to day running of the institution , payment of salaries , statutory deductions and payment to other creditors.
14. And further that it is in the interest of justice and for the learners, school workers, and general public that the applicant be allowed to settle the sum instalments for if the respondent is allowed to execute the institution property will be auctioned which may lead to its closing down.
15. In response the respondent told the court that if the applicants proposal is accepted, it means it will take over 5 years to pay the total amount and the more the payment is prolonged the more public suffers for the amount due will continue attracting interest a resource which should be used to benefit the institution.
16. The respondent further submitted that he was surprised by the applicants prayers for in her affidavit supporting the notice of motion dated 12.5.2023 deponed as follows.....”That the applicant is a public government institution capable of settling the decretal award should the appeal herein be dismissed.”

“.....that the respondent is a man of straw, hence if the decretal dues are paid to him in full, he may be unable to refund the same in the event that the appeal succeeds and thus render the appeal nugatory”
17. The law allows payment of decretal sum instalments where there is a good cause. It is incumbent upon the party seeking to be allowed to pay in instalments to demonstrate a good cause.
18. Order 21 Rule 12 of the *Civil procedure rules* provides
 - (1). Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract



under which the money is payable. (2). After passing of any such 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 thinks .

19. Since there is no consent of the parties as contemplated by order 21 rule 12 (1) the applicant should convince the court that there is sufficient cause to allow it to pay the due amount in instalments.
20. The argument by the applicant that it relies on government capitation to run its affairs as a public body is neither here nor there for it is not supposed to engage in any procurement of goods or services without a budget in place. It is assumed that any procurement done, there is a budget for it and any delivery made should be paid for promptly because the money is deemed to be available.
21. Further the time the applicant was seeking for a stay of execution of the judgment of the lower court told the court that it was capable to settle the decretal amount should the appeal be dismissed. Therefore it is estopped from claiming it cannot settle the amount now.
22. This court is alive to the fact that financial circumstances can change at any time, the applicant has not demonstrated whether there is any change in its financial capability from the one obtaining on 15.5.2023 when the affidavit in support of application for stay of execution of the lower court's judgment was deponed.
23. The respondent having a judgment in his favour, has a right to enjoy the fruits of his judgment and there being no sufficient cause demonstrated by the applicant on its inability to settle the decretal amount at once I do dismiss the application dated 12.5.2025 for lack of merit.
24. Costs to the Respondent.
25. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 16TH DAY OF JULY, 2025

S.N MBUNGI

JUDGE

In the presence of:

Court Assistant – Elizabeth Angong'a

