



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CONST. PET. NO. 3 OF 2017

BETWEEN

JACKTON NYANUNGO RANGUMA.....PETITIONER/APPLICANT

VERSUS

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1ST RESPONDENT

THE COUNTY RETURNING OFFICER INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION KISUMU COUNTY (JOHN C. LORIONOKU).....2ND RESPONDENT

H.E. PETER ANYANG' NYONG'O.....3RD RESPONDENT

AND

ROSEMARY ANYANGO MKOK.....OBJECTOR

VICTORIA BLUE AUCTIONEERS SERVICES.....RESPONDENT

RULING

The application dated 7th September 2020 was filed by the Petitioner, **JACKTON NYANUNGO RANGUMA**, seeking leave to liquidate the Decree by way of monthly instalments.

1. The Petitioner was a candidate for the gubernatorial elections in Kisumu County. He lost the elections to the 3rd Respondent, **H.E. PETER ANYANG' NYONG'O**.
2. Thereafter, he challenged the results of the elections by filing the Petition herein. However, he was also unsuccessful in the Election Petition. Apart from dismissing the Petition, the Election Court ordered the Petitioner to pay costs thereof, to the Respondents.
3. On 31st October 2019, the learned Taxing Officer, Hon. B.A. Omollo taxed the 1st and 2nd Respondents' Bill of Costs in the sum of Kshs 3,617,133.20.
4. On the same date, the learned Taxing Officer, Hon. B. A. Omollo taxed the 3rd Respondent's Bill of Costs in the sum of Kshs 3,589,068.30.
5. By his supporting affidavit, the Petitioner has informed the court that the Respondents had taken out execution proceedings by way of attachment of his moveable properties. It is the said action of execution which prompted the application now before me.
6. The Petitioner explained that since he got out from the Position of Governor of Kisumu County, he had not been in any gainful employment. He also said that he did not have any stream of revenue or income other than some "allowances" which are paid to

him for upkeep.

7. The Petitioner deponed that it is he who settles the recurrent liabilities of his family, such as electricity and water.

8. Over and above the said recurrent liabilities, the Petitioner said that he remits monthly payments of Kshs 70,000/= to service an outstanding loan.

9. He explained that he did not even own any assets, whether in the form of households or otherwise.

10. In the circumstances, the Petitioner sought leave to be allowed to liquidate the Decree herein by Kshs 40,000/= monthly. According to him, the said sum of Kshs 40,000/= constituted the only disposable income that he has.

11. Pursuant to the provisions of **Order 21 Rule 12 (2) of the Civil Procedure Rules**, the Court may, for sufficient cause shown, order that the Decree be paid by instalments.

12. When canvassing the application the Petitioner acknowledged that the onus is on the Judgment-Debtor to show that he is entitled to indulgence which would enable him to pay the decretal amount by instalments.

13. It is noteworthy that the Petitioner cited the case of

HILDEGARD NDALUT Vs LELKINA DAIRIES LTD. & ANOTHER (2005) eKLR, to support his application. I say that the citation of that authority is noteworthy because in it, Dulu J. held as follows, in a case in which the Defendant sought leave to pay the decretal sum by instalments;

“..... that a defendant should be required to show his bona fides by arranging fair payment of the proportion of the debt in persuading the court to allow payment by way of instalments. This, in my view, is the proper test to apply in granting orders for payment of a decretal amount by way of instalments.

A judgement-Creditor is entitled to payment of the decretal amount, which he should receive promptly, to reap the fruits of the judgement.

The Judgement-Debtor might genuinely be in a difficult position in paying the decretal amount at once.

However, he has to show seriousness in paying the amount. In that event, he should show his bona fides by arranging fair payment proposals to liquidate the amount.”

14. Based on the foregoing authority, the Petitioner submitted that he had made out a case which justified his inability to liquidate the decree, except by instalments.

15. In my considered opinion, justice cannot be founded upon the consideration of only the inability of the judgment-debtor to pay the decretal amount promptly. The court, when exercising its discretion must be alive to the fact that the successful Decree-holder has a legal right to receive payment promptly. Therefore, if the court was persuaded to allow the judgment-debtor to pay the decretal amount by instalments, the indulgence granted should not result in an unreasonable prejudice to the judgment-creditor.

16. I believe that that is why in the case of **KTK ADVOCATES V BARINGO COUNTY GOVERNMENT (2018) eKLR**, the Court reiterated that;

“..... the mere fact that the debtor is hard pressed or is unable to pay in full at once, is not sufficient reason for granting leave to pay by instalments.”

17. The court takes note of the fact that the costs payable by the Petitioner is Kshs 7,606,141.50.

18. Out of that sum, the Respondents recovered Kshs 500,000/= in total, out of the amount which the Petitioner had deposited as security in the Petition.

19. By my calculations, the outstanding balance is now Kshs 7,106,141.50.

20. If the Petitioner was granted leave to pay the outstanding balance by monthly instalments of Kshs 40,000/=, it would take over 14 years to clear.

21. Bearing in mind the fact that the costs were taxed in October 2019, that would imply that the Respondents would have waited for more than 15 years to get paid.

22. In my considered opinion the proposal put forward by the Petitioner is not at all reasonable in the circumstances. It would visit great prejudice upon the Respondents if the court were to tell them to wait for such a long period of time before they can get paid.

23. Accordingly, the application dated 7th September 2020 is rejected, as it lacks merit.

24. The Petitioner shall pay to the Respondents, the costs of the application.

DATED, SIGNED and DELIVERED at KISUMU This 9th day of March 2021

FRED A. OCHIENG

JUDGE