



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**MISC APPLICATION NO. 1165 OF 2003**  
**IN THE MATTER OF THE ARBITRATIONS ACT 1995**

**JOHN BOSCO NGETA MAUNDU.....PLAINTIFF**

**VERSUS**

**1. WILLIAM WAMBUA KIWIA**

**2. CHARLES MUTUKU**

**3. BAUMANN'S LIMITED**

**4. THE ATTORNEY-GENERAL.....DEFENDANTS**

**R U L I N G**

**1.** This ruling concerns the **notice of motion dated 13/11/2013** filed by the 2<sup>nd</sup> Defendant/Judgment-Debtor, **Charles Mutuku**. He seeks two main orders as follows -

(a) Prayer 4: That the court do allow him to offset the balance of the decretal sum by way of monthly installments of KShs 50,000/- per month “for the next twelve (12) months commencing the 10<sup>th</sup> January 2014”.

(b) Prayer 5: That consequent to the grant of prayer 4 the court do issue further directions on settlement of the balance of the decretal sum after payment of the proposed instalments set out in prayer 4.

The application is supported by the 2<sup>nd</sup> Defendant’s affidavit.

**2.** The application is opposed by the Plaintiff/Decree-Holder by **replying affidavit filed on 24<sup>th</sup> January 2014**. In response to this affidavit the 2<sup>nd</sup> Defendant filed a **supplementary affidavit** (titled further affidavit) on **4<sup>th</sup> February 2014**. In his turn the Plaintiff filed a **further replying affidavit on 7<sup>th</sup> February 2014**. I have read all these affidavits.

**3.** The application was canvassed by way of written submissions. Those of the 2<sup>nd</sup> Defendant were filed on 17<sup>th</sup> April 2014 while the Plaintiff’s submissions were filed on 27<sup>th</sup> May 2014. I have considered those submissions. I have also perused as much of the huge court record as I could.

4. As I observed during the proceedings of 17<sup>th</sup> February 2014, this matter has already taken up an inordinate amount of the court's time. There have been numerous applications by the 2<sup>nd</sup> Defendant since the decree was passed against him in the year 2003. These applications have included at least two previous applications seeking the court's indulgence to pay the decretal sum by instalments. On 15<sup>th</sup> March 2010 the 2<sup>nd</sup> Defendant had been extended the indulgence to pay the decree by instalments. He never adhered to the schedule of payment allowed.

5. A second similar application for payment by installments was by notice of motion dated 17<sup>th</sup> October 2012. In a considered ruling dated and delivered on 14<sup>th</sup> December 2012 running to some fifteen (15) typed pages the Court (Odunga, J) dismissed the application with costs. In doing so the learned judge observed as follows –

**“In this case the respondent has been baby-sitting a barren decree since the year 2003. Although the court granted the applicant indulgence to settle the decretal sum by instalments, instead of doing so, the applicant decided to engage the respondent in further legal proceedings hence accruing more costs. Instead of complying with the order of the court granting the applicant indulgence to settle the decretal sum by way of instalments, the applicant has presented the present application. In my view there can be no worse form of abuse of the process of the court than this....”**

7. I hold the same sentiments regarding the 2<sup>nd</sup> Defendant's latest application by notice of motion dated 13<sup>th</sup> November 2013. It is an abuse of the process of the court by a judgment-debtor who is apparently determined to manipulate the process of the court in order to avoid or delay indefinitely full payment of the decretal sum. The 2<sup>nd</sup> Defendant has succeeded in doing precisely that the last ten (10) years. He should not be permitted to do so any longer!

8. The notice of motion dated 13/11/2013 is not only an abuse of the process of the court; it also lacks merit. A previous similar indulgence to pay by instalments was not met. A subsequent application for similar indulgence was dismissed for being an abuse of the court's process. Why should further indulgence be granted now? The application is hereby dismissed with costs to the Plaintiff/Decree-Holder. Any interim stay of execution in place is hereby set aside. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2014**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF JULY 2014**