

- b. THAT this Honourable court be pleased to issue stay of execution orders of the judgment delivered on 12th June 2025 pending the hearing and determination of this Application.
- c. THAT this Honourable Court be pleased to issue an Order allowing the Applicant to settle the judgment sum of Kshs. 410,850.00 plus interest and all costs with a first installment of Kshs. 100,000.00 and subsequently in monthly installments of Kshs. 50,000.00 each until payment in full
- d. THAT each party to bear their own costs on the application.

Grounds of the application

2. That on 12th June 2025, the Court delivered judgment in favor of the Appellant allowing the Appeal with costs, setting aside the trial court's decision delivered on 26th day of February 2024 in Milimani MCELRC No. E1582 of 2022 and substituted it with an order granting the Appellant relief of Kshs. 410,850.00 plus interest and costs.
3. Following this outcome, the Appellant has now demanded full payment of the awarded Kshs. 410,850.00 plus interest and costs for the trial court claim and the allowed appeal.
4. The Applicant is faced with the difficulty of paying the demanded amounts in lump sum which is nearly impossible for the Applicant on account of the financial constraints that it is grappling with which are beyond its control.

5. Additionally, the amounts demanded were not a contemplated expense on the part of the Applicant hence they are sincerely unable to pay the amounts in lumpsum.
6. In view of the harsh economic times the Applicant's financial position has been greatly affected.
7. Despite its inability to settle the debt amount in lump sum, the Applicant has demonstrated good faith towards the settlement of the debt by proposing to settle the amount due of Kshs. 410,850.00 plus interest and costs with a first installment of Kshs. 100,000.00 and subsequently in monthly installments of Kshs. 50,000.00 each, until payment in full which has prompted us to seek the court's intervention in filing this application.
8. That the proposed monthly installment amounts of firstly Kshs. 100,000.00 and subsequently in monthly installments of Kshs. 50,000.00 is reasonable taking into account the Applicant's current financial position.
9. That though the Appellant has rejected the Applicant's proposal, the Applicant has proceeded to issue postdated cheques for the installments demonstrating its bonafides and or honesty in settling the debt amount.
10. That it is in the interest of justice that this Honourable Court grants a stay of execution and allow the Applicant to settle the decretal sum in installments.
11. The application is further supported by the annexed Affidavit of Lawrence Gichuki, the annexed redundancy letters issued to several of its employees (LG-1), post-dated checks issued

by the applicant in favor of the appellant (LG-2), and correspondence between the parties regarding the settlement (LG-3).

Response

12. The applicant responded by way of grounds of opposition dated 28th July 2025 to the application as follows-
- a. The Respondent has failed to demonstrate its bona fides by failing to provide its Audited Accounts or any other financial records for the court to assess its financial status. Issuance of redundancy notices is not a reflection of the financial status of the Respondent.
 - b. Unfair termination of employment is quite disruptive to an employee who is suddenly left without an income. Allowing the Respondent to settle the claim in installments will amount to continued oppression and exposure of the Appellant to financial constraints.
 - c. The application lacks merit and is only intended to delay the Appellant from enjoying the fruits of his judgment

Issues for determination

13. The applicant outlined the following issues for determination in the application-
- i. Whether the Applicant has demonstrated sufficient cause to warrant extension of the stay of execution granted on 12th June 2025
 - ii. Whether the Applicant has satisfied the legal and equitable threshold for leave to settle the decretal sum in instalments.
14. The respondent submitted on the merits of the application.

15. The court, having perused the application finds the issue for determination to be-

Whether the Applicant has satisfied the legal and equitable threshold for leave to settle the decretal sum in instalments.

Whether the Applicant has satisfied the legal and equitable threshold for leave to settle the decretal sum in instalments.

The applicant's submissions

16. Order 21 Rule 12 of the Civil Procedure Rules governs the postponement of payment of a decretal sum or settlement by installments. It states: *"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 installments, with or without interest, notwithstanding anything contained in the contract under which the money is payable. After passing of any such judgment or decree, the court may, on the application of the judgment debtor and with 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 installments 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 fit."* The Court's discretion under this provision has been authoritatively interpreted in *Mwangi Kengara & Co. Advocates V Kibe* [2023] KEELC 20054 (KLR), where Mogeni J stated: *"...the court has discretion and power to order payment of the decretal sum in installments on application by the judgement-debtor with or without the decree-holder's consent. The judgement-debtor has to show sufficient cause as to why he should be allowed to pay the decretal sum in installments and/or why the payments should be postponed. Further in my opinion, this court discretion to order payment in*

instalments and/or on such terms it deems fit must be exercised judiciously having regard to the facts and circumstances of each individual case.” The cardinal rule in the exercise of discretion as regards payment of the decretal sum by instalments, like any other, is therefore that the exercise of discretion must be exercised in a judicial and not an arbitrary manner. In this regard, the court in *Masai Kenya Limited V Hardware & Steel Centre Ltd & Another* (2013) EKLK cited with approval the case of *A. Rajabali Alidina v Remtulla Alidina & Anor.* (1961) EA 565, where Law JA (as he then was) detailed that: *“All commentators on the Civil Procedure Code agree that the court’s discretion to order payment of the decretal amount in instalments is one which must be exercised in a judicial and not an arbitrary manner. The onus is on the defendant to show that he is entitled to indulgence under this rule.”* The courts must therefore judiciously determine whether the Applicant has met the statutory threshold set under Order 21 Rule 12. The order requires one to show sufficient cause for a court to give an order under it. The court in *Masai Kenya Limited V Hardware & Steel Centre Ltd & Another*(SUPRA) expounded on what constitutes sufficient cause as follows:-

“As regards what constitutes “for any sufficient reason” as detailed in Order 21, rule 12, Law JA referred to a passage in Woodroffe & Amir Ali’s Civil Procedure in British India, 2nd Edition, p. 869 and quoted as to what constitutes sufficient reason as follows: “These are: (a) the circumstances under which the debt was contracted (b) the conduct of the debtor (c) his financial position (d)his bona fides in offering to pay a fair proportion of the debt at once.”

Similarly, the court in *Botanics Kenya Ltd –Vs- Ensign Food (K) LTD* (1959) as referred to in *Nicholas Gitonga Murongi V Susan Wairimu & 4 Others* [2021] EKLK provided what constitutes sufficient reason as follows: -

- i. The circumstances under which the debt was contracted;
- ii. The conduct of the debtor;

iii. His financial position;

iv. His bona fides in offering to pay a fair proportion of the debt.”

17. In satisfying the aforementioned tests, the applicant sequentially addressed them as hereunder: -
- Circumstances under which the debt was contracted - It is the Applicant’s submission that the decretal amount arose from a judgment following appeal; it was neither anticipated nor budgeted for, and did not arise from wilful default. The demand for immediate payment, following the setting aside of the trial court judgment on 12th June 2025, has placed a significant strain on the Applicant’s operations. The Conduct Of The Debtor - The Applicant has acted in good faith by proposing to settle the entire judgment debt through an initial payment of Kshs. 100,000.00, followed by monthly instalments of Kshs. 50,000.00 until full satisfaction. To demonstrate its commitment, the Applicant has handed post-dated cheques covering each proposed instalment to the Appellant’s advocates (annexed as “LG-2” in the Application). Despite this overture, the Appellant has declined the instalment plan and indicated that, upon expiry of the 30-day stay on 12th July 2025, he will proceed to instruct auctioneers and enforce the judgment against the Applicant’s assets, as confirmed in the email correspondence annexed as “LG-3” in the Application. The Applicant’s Current Financial Position The Applicant has been unable to comply with the immediate payment demand due to harsh economic conditions and prevailing business downturns, including delayed client remittances, unexpected operational expenses, and reduced revenue inflows. Consequently, Gramo Properties Limited has issued formal redundancy notices to eight employees (annexed as “LG-1”), reflecting the company’s constrained financial capacity. The Applicant’s Bona Fides In Offering To Pay A Fair Proportion Of The Debt. The Applicant has acknowledged the debt and demonstrated a sincere willingness to settle by proposing a structured payment plan with an initial Kshs. 100,000.00 payment and

subsequent monthly instalments of Kshs. 50,000.00. Post-dated cheques have been provided to evidence this commitment, showing that the Applicant intends to discharge the decretal sum fully, notwithstanding the Appellant's refusal of the proposed schedule. Execution at this stage would cause irreparable harm to the Applicant's business, staff, and reputation, whereas the Appellant would suffer no prejudice if payment is made via the proposed instalments. Therefore, the Applicant has satisfied the legal and equitable threshold, demonstrating sufficient cause to pay the decretal sum by structured instalments without causing prejudice to the Respondent.

Respondent's submissions

18. The application dated 8th July, 2025 is by the Respondent for leave to settle the claim in installments. The application is opposed by Grounds of Opposition dated 28th July, 2025. The gist of the opposition is that the Respondent has failed to demonstrate its bona fides and failed to provide its financial records to assist the court to determine its inability to settle the claim in one payment. Where a party fails to provide crucial evidence that is in his/her possession then the presumption in law is that if such evidence was to be provided then the same would be adverse to the party and the court is entitled to make such an inference with regard to the failure by the Respondent to provide its financial records. Please refer to *Grain Industries Limited v Ali & 6 others* [2023] KEHC 27009 (KLR) highlighted at paragraph 14. An application for settlement of a decree in installments is considered on judicial discretion. The exercise of judicial discretion in any given instance is intended to avoid injustice or hardship to a party but not to delay or obstruct the cause of justice. In the absence of financial records or even claims by creditors of the Respondent then the court cannot determine whether the Respondent is hard pressed financially and stands to suffer any hardship in paying the decretal sum in one bullet. The

Appellant submits that the application is purely intended to obstruct or delay justice for the Appellant and to keep him away from enjoying the fruits of his judgment.

19. The Respondent has not met the test in *Keshavji Jethabhai & Brothers Limited V Saleh Abdulla*[1959] E.A. 260 in that it has failed to demonstrate its bona fides and in any event the mere inability to pay in full at once is not a sufficient reason for a judgment debtor to be allowed to settle in installments. This is a debt that arose as a result of unfair termination of employment. Unfair termination of employment is in itself bad enough more so in the current environment where jobs are hard to come by. Such unfair termination of employment should not be indirectly rewarded by allowing the employer to settle the claim at their convenience in installments and more so in the circumstances of the present case where the employer has failed to show its bona fides. The employer should feel the pinch of being called upon to settle the claim at once so that it may, perhaps, serve as a deterrent measure against the future conduct of the Respondent with regard to terminations. Even assuming that the Respondent had started paying in installments as proposed then by the mention date of 17th September, 2025 a sum of 200,000 would have been paid as per the cheques for July, August and September annexed to the application but so far no payment has been made which is a clear lack of bona fides. Nothing stopped the Respondent from forwarding the cheques for July, August and September to the Appellant on their respective due dates. The Appellant further relies on *Julius Odhiambo Awuonda v Kenya Commercial Bank Limited* [2023]KEHC 3136(KLR) as highlighted at paragraph 21,22 and 25 for the submission that the Respondent has not surmounted the relevant principles for the exercise of judicial discretion in its favour. In the circumstances, the Appellant prays that the Application dated 8th July, 2025 be dismissed with costs. The Appellant further prays that the costs of this

application, and the appeal, be assessed summarily by the Honourable Court in the exercise of the discretion of the court in the interest of expediting recovery by the Appellant.

Decision

20. The issue before the court is whether this court ought to allow settlement of the decree by way of instalments as proposed by the applicant. The parties agree on the threshold to apply in the decision as stated in Nicholas Gitonga Murongi V Susan Wairimu & 4 Others [2021] EKLR provided what constitutes sufficient reason as follows: -

- i. The circumstances under which the debt was contracted;
- ii. The conduct of the debtor;
- iii. His financial position;
- iv. His bona fides in offering to pay a fair proportion of the debt.

This test is reiterated in decision cited by the Respondent in the case of Rajabali Alidina v Remtulla Alidina & Another (1961) EA 565, cited in Awuonda v Kenya Commercial Bank Limited (2023)e KLR where the court set conditions to be considered as follows: a. The circumstances under which the debt was contracted; b. The conduct of the debtor; c. His financial position; d. His bona fides in offering to pay a fair proportion of the debt at once.

21. As earlier stated, Order 21 Rule 12 (2) of the **Civil Procedure Rules, 2010** empowers the court to determine whether payment of the amount decreed will be postponed or settled by way of installments to wit- *“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 installments 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 fit.”

The court’s discretion must be exercised judiciously and not arbitrarily or whimsically but each case is decided on own merit. The court then proceeds to consider the test as per case law cited by the parties (see *Rajabali Alidina v Remtulla Alidina & Another* (1961) EA 565 above)-.

22. On the circumstances under which the debt was contracted- This was a debt arising from a Decree of the court dated 12th June 2025 against the applicant.
23. On the conduct of the debtor- The applicant following the judgment filed the instant application dated 8th July 2025 seeking for stay of execution pending the hearing and determination of the application and sought to settle the decretal sum together with interest and costs in installment of Kshs.100000 and subsequently 50000 each month until payment in full. The court finds this was within the stay of 30 days hence the applicant conduct is deemed to be in good faith and diligent.
24. On the applicant’s financial position;- the applicant submitted that it has been unable to comply with the immediate payment demand due to harsh economic conditions and prevailing business downturns, including delayed client remittances, unexpected operational expenses, and reduced revenue inflows. Consequently, Gramo Properties Limited has issued formal redundancy notices to eight employees (annexed as “LG-1”), reflecting the company’s constrained financial capacity.
25. The respondent submitted that the gist of the opposition is that the Respondent has failed to demonstrate its bona fides and failed to provide its financial records to assist the court to

determine its inability to settle the claim in one payment. Where a party fails to provide crucial evidence that is in his/her possession then the presumption in law is that if such evidence was to be provided then the same would be adverse to the party and the court is entitled to make such an inference with regard to the failure by the Respondent to provide its financial records. The respondent relied on decision in Grain Industries Limited v Ali & 6 others[2023] KEHC 27009(KLR) highlighted at paragraph 14. 2. An application for settlement of a decree in installments is considered on judicial discretion. The exercise of judicial discretion in any given instance is intended to avoid injustice or hardship to a party but not to delay or obstruct the cause of justice. In the absence of financial records or even claims by creditors of the Respondent then the court cannot determine whether the Respondent is hard pressed financially and stands to suffer any hardship in paying the decretal sum in one bullet. The Appellant submits that the application is purely intended to obstruct or delay justice for the Appellant and to keep him away from enjoying the fruits of his judgment.

26. On the applicant's bona fides in offering to pay a fair proportion of the debt at once- The applicant proposed to settle by instalment of first Kshs 100000 and 50000 every month thereafter. The applicant submits that he Applicant has acknowledged the debt and demonstrated a sincere willingness to settle by proposing a structured payment plan with an initial Kshs. 100,000.00 payment and subsequent monthly instalments of Kshs. 50,000.00. 48. Post-dated cheques have been provided to evidence this commitment, showing that the Applicant intends to discharge the decretal sum fully, notwithstanding the Appellant's refusal of the proposed schedule. 49. Execution at this stage would cause irreparable harm to the Applicant's business, staff, and reputation, whereas the Appellant would suffer no prejudice if payment is made via the proposed instalments. 50. Therefore, it is our submission that the Applicant has satisfied the legal

and equitable threshold, demonstrating sufficient cause to pay the decretal sum by structured instalments without causing prejudice to the Respondent.

27. Conversely, the respondent submitted that the Respondent has not met the test in Keshavji Jethabhai & Brothers Limited V Saleh Abdulla[1959] E.A. 260 in that it has failed to demonstrate its bona fides and in any event the mere inability to pay in full at once is not a sufficient reason for a judgment debtor to be allowed to settle in installments. This is a debt that arose as a result of unfair termination of employment. Unfair termination of employment is in itself bad enough more so in the current environment where jobs are hard to come by. Such unfair termination of employment should not be indirectly rewarded by allowing the employer to settle the claim at their convenience in installments and more so in the circumstances of the present case where the employer has failed to show its bona fides. The employer should feel the pinch of being called upon to settle the claim at once so that it may, perhaps, serve as a deterrent measure against the future conduct of the Respondent with regard to terminations. That even assuming that the Respondent had started paying in installments as proposed then by the mention date of 17th September, 2025 a sum of 200,000 would have been paid as per the cheques for July, August and September annexed to the application but so far no payment has been made which is a clear lack of bona fides. Nothing stopped the Respondent from forwarding the cheques for July, August and September to the Appellant on their respective due dates.

28. The court having evaluated the position of the parties finds that the applicant's conduct in approaching the court was in good faith as it came to court within the 30 days of order of stay of execution and with a reasonable offer to settle the debt by way of few instalments. The financial difficulty was demonstrated by the notices of redundancy. The court found no basis to require

the production of more evidence on financial status as redundancy can be a demonstration of financial challenges of an employer. The court finds that the applicant met the test, on a balance of probabilities cited in *Rajabali Alidina v Remtulla Alidina & Another* (1961) EA 565, cited in *Awuonda v Kenya Comemercial Bak Limited* (2023)e KLR where the court set conditions to be considered as follows: a.The circumstances under which the debt was contracted; b.The conduct of the debtor; c.His financial position; d.His bona fides in offering to pay a fair proportion of the debt at once. The court is persuaded to exercise its judicial power under Order 21 Rule 12 (2) of the *Civil Procedure Rules, 2010* to allow the decretal sum to be settled by way of instalments as suggested by the applicant.

29. The final order of the court is that the court is pleased to issue order of stay of execution of the judgment dated 12th June 2025 on condition that the applicant/ judgment debtor settles the decretal sum of Kshs. 410,850 plus interest and all costs in instalments with a first instalment of Kshs. 100,000 payable in October within 7 days of this Ruling and subsequently in monthly installments of Kshs. 50,000 each month until payment in full.
30. Cost of the application to the appellant/respondent.
31. It is so Ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF OCTOBER, 2025.

J.W. Keli

JUDGE

In the presence of

C/A Otieno

Respondent/Applicant – Muya

Appellant/ Respondent- Masinde

ORIGINAL