



REPUBLIC OF KENYA



KENYA LAW
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**Akumu & 2 others v Onyona & 2 others (Environment and Land Appeal
E017 of 2023) [2025] KEELC 7235 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7235 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND APPEAL E017 OF 2023**

AE DENA, J

OCTOBER 23, 2025

BETWEEN

**JANE ATIENO AKUMU 1ST APPELLANT
CHARLES AKUMU OPIJA 2ND APPELLANT
BERNARD OTIEP AKUMU 3RD APPELLANT**

AND

**JOHN OJWANG ONYONA 1ST RESPONDENT
MARTIN JOHN ODHACH 2ND RESPONDENT
KEFA OCHOLA NYADUNDO 3RD RESPONDENT**

RULING

1. The applicant has filed a Chamber Summons seeking the following orders;-
 1. Spent
 2. That the court be pleased to stay execution of the decree herein pending the hearing and determination of this application
 3. That the appellants/judgement debtors be allowed to settle the decretal sum of Kshs. 101,150/- in instalments of Kshs. 5620/- per month within the next 18 months
 4. That costs be provided for
 5. That the honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The application is supported by the affidavit of Jane Atieno Akumu sworn on 7/03/2025. It is deponed that the respondent was awarded the costs of the appeal herein which were on 14/2/20 25 taxed at Kshs.



101,150/- without her participation. A stay of 30 days was granted which at the time of the application was to lapse on 16/03/2025. That during the said 30 days efforts to engage the advocate on payment of the same by instalments were not fruitful. Instead, the advocate has threatened to commence the execution process.

3. The deponent proposes to pay by monthly instalments of Kshs. 101,150/- for 18 months. That the debtors are from a very humble background and cannot raise the amount at once.
4. The record also bears an affidavit in support of the request to pay by instalments sworn by Bernard Otiap Akumu the 3rd applicant on 7th March 2025. The deponent undertakes to comply with the payment of the monthly instalments and that he has no intention in delaying or evading the payment of the taxed amount. That his co-appellants have no source of income and depend on him. That his financial situation has been affected by other financial obligations incurred recently following the death of his step brother.
5. The application is opposed through the replying affidavit of Martin John Odhach the 2nd respondent decree holder on 4/04/2025 with authority of the 1st and 3rd decree holders. It is deponed that the 3rd appellant is a teacher and of good means as he has a stable source of income. That he has been the one financing the case since its inception at the trial court to the appeal herein and thus capable of satisfying the decree and costs in full. That allowing the application would be denying the decree holders enjoyment of the fruits of their judgement since the 18 months is not economically sustainable.
6. In further response the applicant filed a Supplementary supporting affidavit. It is admitted the 3rd appellant is a teacher but who carries a significant financial burden including educating his daughter in one of the leading national schools. A payslip is attached for the month of March 2025. That the court is clothed with power under Order 21 Rule 12 of the Civil Procedure Rules to allow the prayers sought. The deponent further reiterates his good will to comply with the proposed payment plan.

SUBMISSIONS

7. The application was disposed by way of written submissions. The respondent filed submissions on 13/5/2025 which I have considered. the applicant did not file submissions.

DETERMINATION

8. Having considered the foregoing the main issue that commends determination is Whether the Defendant has shown sufficient cause for payment of the amount decreed in instalments.
9. The law applicable as rightly submitted by the respondent is Order 21 Rule 12 of the Civil Procedure Rules. The same reads;-

[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 fit.



10. From the foregoing provisions the jurisdiction is discretionary. However, it is established that discretion must be exercised judiciously.
11. Counsel for the respondent has referred this court to the case of *Osir v Olima* [Environment & Land Case E004 of 2022] [2025] KEELC 882 KLR which set out the principles to guide in exercising the power to order settlement by way of instalments. The learned judge cited the case of *Madi & 3 others v Madi* [Miscellaneous Application 34 of 2020] [2023] KEHC 1016 [KLR] where Justice Githinji held thus:-

“A cursory reading of Order 21 Rule 12 of the Civil Procedure Rules empowers the Court to order settlement of the decretal sum by instalment or postponement thereof. The Court in *Keshvaji Jethabhai & Bros Limited v Saleh Abdulla* [1959] EA 260 laid down the principles that should guide the Court in the exercise of discretion in such matters and states as follows:

“whilst creditors’ rights must be considered each case must be considered on its own merits and discretion exercised accordingly; the mere inability of a debtor to pay in full at once is not a sufficient reason for exercise of the discretion; the debtor should be required to show his bona fides by arranging prompt payment of a fair proportion; Hardship of the debtor might be a factor, but it is a question in each case whether some indulgence can fairly be given to the debtor without prejudicing the creditor.”

12. In the case of *Freight Forwarders Ltd v Elsek & Elsek [K] Ltd* [2012] eKLR, the court outlined principles for determining ‘sufficient cause’ as follows: - [a] The debtor is unable to pay in lump sum. [b] The debtor can pay by reasonable monthly instalments. [c] The application is made in utmost good faith.
13. It has been submitted that the judgment debtors have not given any sufficient reasons as to why the court should exercise its discretion in their favor save their mere inability to pay. That since the lapse of the orders of stay of execution issued by the court no evidence has been adduced to show any attempts to settle the decretal sum.
14. In the present case the applicant has deponed that he has made efforts to have the matter settled in instalments but counsel for the respondent has refused and threaten execution. It has not been specifically denied that these efforts were made. What I hear counsel for the respondent to be having a problem with is the fact that there has been no payment of a portion since the lapse of the stay orders. I think the parameters given in *Osir v Olima* [supra] anticipate the liquidation of a portion for starters followed by the instalment plan proposal. This in my view ought to have been what the 30 days efforts by the applicants should have yielded as a sign of goodwill upon which the payment for liquidation in instalments would be tabled for consideration. Indeed the portion would go a long way in reducing the period for payment in instalments in addition to the goodwill.
15. But what is sufficient cause and a fair proportion considering the circumstances of this case. A copy of the payslip has been annexed which shows a net income of around Kshs. 20,000/-. The applicant has informed the court that the other respondents are dependent on him. However the court must also consider the respondents decree creditors as well, who have to wait for 18 months for the full payment to be made. This is the prejudice they have raised.
16. The court appreciates and have noted the hardship based on the payslip seen but it also takes cognisance of the other two creditors who must also rise up to the occasion and ameliorate this burden from the deponent. They must as a team look for a proportion to deposit as a sign of goodwill. I note from the



ruling on taxation that the instructions fees was taxed at Kshs. 60,000. I think half of this amount will be a fair proportion to be paid in the first instance.

17. Noting that one criteria is the reasonability of the instalments and each case is decided on its own merits, I think considering the net take away amount and the loan commitments shown in the payslip attached the proposed amount is reasonable. In this respect the court is guided by the decision in the case of *Diamond Star General Forwarding Ltd v Ambrose D.O. Rachier* [2018] eKLR where it was held that: -

“That my view is an applicant who wishes a court to discretion and order payment of a decretal sum by way of installments must be very candid with the court. Such an applicant must present to the court sufficient material to show that he/she is a person of no means, that whatever income she or he has is lawfully committed elsewhere. He or she must disclose to the court all his/her means and explain to the court why the proposed installments are the best option available. Accordingly, the burden is on the applicant to prove/show that he/she deserves the orders sought”.

18. The court exercising its discretion in favor of the applicants allows the Chamber Summons application in the following terms;-

1. That the applicants shall pay Kshs. 30,000/- within 30 days of this ruling.
2. That the balance of the decretal sum shall be payable in instalments of Kshs. 5700/- per month until payment in full.
3. That upon default of 1 above the entire amount shall become due and payable and the respondents shall be at liberty to execute the decree.
4. Let each party bear its own costs of the present application.

19. Orders accordingly.

DELIVERED AND DATED AT SIAYA THIS 23RD DAY OF OCTOBER 2025

HON. LADY JUSTICE A.E. DENA

JUDGE

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Ms Ochieng for the Respondent

Mr. Charles Akumu Apija 2nd Applicant present in person

Court Assistant: Elisha Mboya

