



**Ngochi Wanjiku & Co. Advocates v Kurgat (Miscellaneous Application E312 of 2024) [2025] KEELRC 2953 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2953 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E312 OF 2024  
CN BAARI, J  
OCTOBER 30, 2025**

**BETWEEN**

**NGOCHI WANJIKU & CO. ADVOCATES ..... APPLICANT**

**AND**

**ABRAHAM KURGAT ..... RESPONDENT**

**RULING**

1. This ruling relates to an application dated 27<sup>th</sup> August, 2025 by the Respondent/Applicant, brought pursuant to Order 22 Rule 22(1), 17, Order 40 (1a), Order 51 Rule 1 of the Civil Procedure Rules, Order 21 Rule 12 (1), (2), Sections 1A, 1B and 3A of the Civil Procedure Act. The Applicant seeks orders THAT: -
  - i. Spent.
  - ii. Spent.
  - iii. There be a stay of attachment of movable properties in execution of decree for money being Motor Vehicles Registration Numbers KCL166L and KBL466H belonging to the Applicant/Respondent, Mogo Auto Limited and My Credit Limited, pending the hearing and determination of this application.
  - iv. This Honourable Court be pleased to grant an order for the payment of the decretal sum by instalments as had been proposed by the Applicant to the Respondent until satisfaction of the decree in full without interest.
  - v. Costs be provided for.
2. The Motion is supported by the grounds on the face and the affidavit of Abraham Kurgat, sworn on 27<sup>th</sup> August, 2025. The crux of the motion is that on 14<sup>th</sup> May, 2025, the Respondent/Applicant was issued with a decree of Kshs.713,599.00/- being the decretal amount and costs thereto arising from



- an Employment & Labour Relations matter E582 of 2023, where the Applicant was represented by Respondent herein in seeking compensation for employment dues.
3. He avers that following the issuance of the decree, the Respondent obtained warrants of attachment for the Applicant's movable properties on 10<sup>th</sup> June 2025 through Betico Auctioneers.
  4. The Applicant states that being unable to pay the full decretal sum of Kshs.713,599, he proposed an out of court payment plan due to financial hardship arising from irregular consultancy income, and has already made a partial payment of Kshs.90,000, leaving a balance of Kshs.623,599.
  5. He avers further that despite this arrangement, on 13<sup>th</sup> August 2025, the Respondent instructed Fantasy Auctioneers to execute the decree and attach movable property worth Kshs.656,824, including two motor vehicles registration numbers KCL166L and KBL466H which are co-owned with Mogo Auto Limited and My Credit Limited.
  6. The Applicant avers that the Respondent has further threatened to issue a Notice to Show Cause for committal to civil jail, causing the Applicant emotional distress.
  7. The Applicant now seeks the Court's intervention to allow payment of the decretal sum by instalments, and prevent attachment of his co-owned property, arguing that granting the application would serve the interests of justice.
  8. The Respondent opposed the application by way of a Replying affidavit sworn by the Respondent on 1<sup>st</sup> September, 2025. The Respondent states that the Applicant had previously filed a similar application dated 10<sup>th</sup> March 2025 seeking a stay of execution of the decree, and that although an interim stay was granted, the Applicant failed to pursue the matter, leading to its dismissal with costs on 2<sup>nd</sup> April 2025.
  9. The Respondent avers that the current application is res judicata and intended to delay and frustrate the Respondent's lawful enjoyment of the decree.
  10. The Respondent states that the Applicant had proposed to settle the decretal sum through a payment plan of KShs.30,000 monthly from July to October 2025, a lump sum of KShs.200,000 in November 2025, KShs.30,000 in December 2025, and KShs.60,000 monthly from January to June 2026, which proposal the Respondent rejected for being unreasonable and intended to delay payment, and communicated the rejection both formally and through WhatsApp messages.
  11. It is the Respondent's case that despite this rejection, the Applicant went ahead and unilaterally deposited KShs.90,000 in four instalments, which the Respondent argues does not amount to compliance or settlement of the decree. The Respondent further maintains that the Applicant has not demonstrated sufficient cause or inability to pay in full as to justify indulgence from the court.
  12. The Respondent states that Fantasy Auctioneers' actions is lawful, executed under proper instructions, and asserts that continued delay prejudices the Respondent, while the Applicant suffers no unfair harm if execution continues.
  13. The Respondent prays that the Applicant's Notice of Motion be dismissed with costs for lacking in merit.
  14. Subsequent to the Replying affidavit, the Applicant swore a Supplementary affidavit on 24<sup>th</sup> September, 2025, wherein he avers that his application is properly before the court and it seeks to facilitate the settlement of the decretal amount, not to delay proceedings.



15. It is his case that his earlier application was dismissed because his former advocate fell ill and abandoned the case, and not out of neglect on his part, hence the current application is not res judicata.
16. The Applicant reiterates that he made a reasonable payment proposal reflecting his financial situation, as the decree arose from an employment claim in which the 1<sup>st</sup> Respondent had represented him, and that he had already paid Kshs.120,000, leaving a balance of Kshs.593,599, which he considers as evidence of good faith and commitment. He avers that the Respondent has not refunded the money, implying acceptance.
17. It is the Applicant's position that his financial hardship results from unemployment and irregular consultancy income, and that the vehicles attached by the auctioneers are co-owned with financial institutions.
18. It is his prayer that he be allowed to settle the decretal amount by instalments, which he believes is fair and lawful.
19. The Applicant states that the 2<sup>nd</sup> Respondent (Fantasy Auctioneers) was only included in the proceedings because they act under the 1<sup>st</sup> Respondent's instructions, and stresses that his goal is to fully settle the debt, not to evade payment.
20. It is his assertion that allowing instalment payments will not prejudice the Respondents.
21. Parties canvassed the application through written submissions which have been duly considered.

### **Analysis and Determination**

22. The issues for determination is whether the Respondent/Applicant deserves the orders sought.
23. On the prayer for stay of attachment of the Applicant's movable properties; which essentially is a form of stay of execution, the grant of such an order is an equitable remedy, and which is given at the discretion of the court. In exercise of this discretion, the Court is guided by the grounds set in the case of Stephen Wanjohi v Central Glass Industries Ltd Nbi HCCC No. 6726 of 1991 where the Court emphasized that:-  
  
    " For the Court to grant stay of execution there must be:  
  
    (a). Sufficient cause.  
  
    (b). Substantial loss.  
  
    (c). No unreasonable delay and security offered for due performance of the decree."
24. Sufficient cause is demonstrated through financial hardship or inability to pay the decretal sum in full immediately, and the risk of irreparable loss if property is sold before the court determines the matter. The Applicant has shown that he lost his regular job and which loss was the subject of the suit that gave rise to the decree herein.
25. The Respondent has confirmed that the Applicant had earlier made a proposal for a payment plan which proposal the Respondent confirmed rejecting.
26. Further, the Applicant has told court that the attached motor vehicles are jointly owned with Mogo Auto Limited and My Credit Limited, which financed the acquisition of the assets. This in my view is confirmation that execution will cause harm that cannot be adequately compensated by way of costs. In James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR the court emphasized that



substantial loss does not mean mere inconvenience or financial burden, but a real risk of irreparable harm.

27. It is further not disputed that the Applicant made part payment of the decretal sum, and which amount the Respondent has not refunded, implying acceptance as was correctly submitted by the Applicant. The part payment and the payment proposal in my view, are a show of good faith and genuine commitment to satisfy the amount owed.
28. I in the circumstances, find the prayer for stay of attachment merited and is allowed as prayed.
29. On whether or not the Applicant should be allowed to settle the decree in instalment, the court is guided by Order 21 Rule 12 of the Civil Procedure Rules, which states thus:-

“Where and is so far as a decree is for 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.....

After passing of any of 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 to 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.”
30. It is evident from the foregoing that an order to settle a decretal sum in instalments, is a discretion power of the Court, but which as always, must be exercised judiciously. In *Rajabali Alidina vs Remtulla Alidina & Another* [1961] EA 565 quoted in *Nicholas Gitonga Murongi vs Susan Wairimu & 4 Others* [2021] eKLR the court held that the considerations to be made in an application seeking to settle the decretal sum via installments are:-
  - i. The circumstances under which the debt was contracted.
  - ii. The conduct of the debtor
  - iii. His financial position, and
  - iv. His bona-fides in offering to pay a fair proportion of the debt at once.
31. The debt in issue arose from a court case where the Respondent represented the Applicant in a suit arising from dismissal from employment. The record indicates that the Applicant made part payment of legal fees, and the balance resulted from an assessment of Advocate/Client costs, which again, the Applicant has shown that he has made part payment of the assessed costs and further given a payment plan.
32. The Applicant also told court that having lost his job and now being reliant on consultancies whose income is not regular, he is unable to meet the decretal sum all at once, hence the prayer to make the payment by instalments.
33. Taking into account the circumstances under which the debt was contracted, the Applicant’s financial position and his conduct in relation to settlement of the decretal sum, I reach the conclusion that the Applicant merits grant of the orders sought.
34. In the upshot, I grant the following reliefs: -



- a. That an order be and is hereby issued staying attachment of the Applicant's movable properties in execution of decree for money, being Motor Vehicles Registration Numbers KCL166L and KBL466H.
- b. That an order be and is hereby granted for the payment of the decretal sum by instalments until satisfaction of the decree in full as follows:-
  - i. KShs.300,000 to be paid in December, 2025,
  - ii. KShs.30,000 monthly from January, 2026 until payment in full.

35. I make no orders on costs.

36. It is ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Ms. Ngochi present for the Applicant/Respondent

Ms. Kenyani present for the Respondent/Applicant

Ms. Esther S -C/A

