

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO. 488 OF 2007**

**JAYESH**

**HASMUKH**

**SHAH.....PLAINTIFF**

**=VERSUS=**

**NAVIN**

**HARIA.....1<sup>ST</sup>**

**DEFENDANT**

**MANU**

**SHAH.....2<sup>ND</sup>**

**DEFENDANT**

**RULING**

1. This ruling is on a post-judgement Application herein dated 28<sup>th</sup> November 2024. The same which is by Notice of Motion, has stated that it has been brought pursuant to Order 22 Rule 42 of the Civil Procedure Rules. By it, the Applicant/Judgment Debtors NAVIN HARIA and MANU SHAH, are seeking to be allowed by this Court, to pay the decretal sum herein, in instalments as follows:

(1) 1<sup>st</sup> payment of Ksh 38,191,604=.

(2) Thereafter in instalments of Ksh1,000,000= (Kenya Shillings One Million) monthly until payment in full.

2. The Decree-Holder has in response opposed the Application through his Replying Affidavit. In which response, he has argued that the decretal sum is now standing at more than Ksh 130,000,000= (Kenya Shillings One Hundred and Thirty Million). Hence that allowing that arrangement means the decree will take over seven years to satisfy.

3. The Application was argued orally. With each party urging its position. I have considered the Application (together with its Supporting Affidavit), the Decree-Holder's Response to it, the rival arguments of the parties, as well as the applicable law and judicial decisions.

### ***Analysis and Determination***

4. Firstly, this Application has cited and invoked the wrong provisions of the law. Order 22 Rule 42 of the Civil Procedure Rules, is on attachment of salary. Not payment of a decree, by instalments. The correct provision with regard to payment of a decree by instalments is Order 21 Rule 12 of the Civil Procedure Rules. Which provides as follows:

#### **Order 21 Rule 12 (1)**

**“Where and in 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 instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.”**

5. The reasons the Application has offered for the court's indulgence for instalments payments, are:
  - (a) *That the 1<sup>st</sup> Judgment-Debtor is retired and of old age.*
  - (b) *That the Judgment-Debtors do not have sufficient property and assets.*
  - (c) *That the payments will be partly from the 1<sup>st</sup> Judgment-Debtor's savings.*

6. There is in law, a legal threshold for applications for instalment payments of decrees. That legal threshold has been affirmed in case law. In **Rajabali Alidina v. Rentulla Alidina [1961] E.A. 565**, for instance the now defunct Court of Appeal for East Africa in restating the principles upon which a court may grant indulgence to a Judgment-Debtor to pay the decree by instalments stated that the court will consider the following:

**(a) The circumstances under which the debt was contracted.**

**(b) The conduct of the debtor.**

**(c) His financial position, and**

**(d) His bona fides in offering to pay a fair proportion of the debt at once.**

7. From decisions on this subject, the key consideration is the balancing of equities between the interests of the Decree-Holder and those of the Judgment-Debtor. All in the interest of justice and in applying the age-long rules of equity.

8. This suit was filed in the year 2007 and was based on a foreign judgement. It is now more than 18 years since that date. I am further conscious of the legal principle that a successful litigant like the Respondent, should be allowed to enjoy the fruits of his judgment. Hence ordinarily, what should follow after a decree, is execution. Instalment payment of a decree should be ordered when there is sufficient reason(s), and in the most persuasive and compelling of circumstances. Not just mechanically or as a matter of course.

9. I agree with the Respondent, that even with the initial suggested deposit, the proposed periodic payments will

take many years to complete. That will be unconscionable. On an Application for instalment payment of a decree, a court should not approve an instalment payment arrangement or instalments that are outrightly unconscionable or oppressive to the Decree-Holder. Such as this one that distributes instalments over an unconscionably or unreasonably long duration, as to make a mockery of the decree.

10. As to whether the Application meets the threshold set in ***Alidina v. Alidina***(supra), I find that it does not; and the Applicants have not even bothered to address those factors, or to make their plea to fit in the template that the decision prescribed.

11. In the end therefore, this Application fails, and is hereby dismissed with costs.

**DATED and DELIVERED at NAIROBI this 29<sup>th</sup> day of October 2025.**

**PROF (DR) NIXON SIFUNA  
JUDGE**