

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO. 873 OF 2019
KENNEDY KOOME MARETE
CLAIMANT**

v

**BENARD ONDIEKI MOSETI
t/a B MOSETI & CO ADVOCATES
RESPONDENT**

RULING NO 2

1. The Motions for the Court's attention is dated 24 June 2024.

2. In this Motion, the Respondent seeks orders:

(i) ...

(ii) ...

(iii) ...

(iv) THAT there be an order granting

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leave to the applicant to settle the decretal sum of Kshs 913,444.66 in reasonable monthly instalments of Kshs 50,000/- on or before the 5th day of every month until payment in full.

(v) THAT the costs of the application be provided for.

3. The grounds advanced in support of the Motion were that the Court had dismissed an application to review the judgment delivered on 2 August 2019. The Claimant had started execution; the decretal sum was colossal and the Respondent could not settle it at once due to financial circumstances beyond his control; the Respondent was willing to pay Kshs 182,489/- upon the determination of the Motion and that it was in the interest of justice for the Court to exercise its discretion in favour of the Respondent.

4. The Claimant filed a replying affidavit opposing the Motion on 14 July 2025, wherein he deponed that the Motion was frivolous and an abuse of the court process; the Motion was meant to deny him to benefit from the judgment; the Respondent was an advocate

and knew the consequences of not complying with court orders; an application to set aside the judgment had been dismissed; the Respondent had failed to abide with a conditional stay order and that the Respondent had offered to pay Kshs 500,000/- on 1 July 2025 but had not made any payment.

5. The Respondent filed a further affidavit and submissions on 21 July 2025, asserting that the Court had the jurisdiction under Order 21 Rule 12 of the Civil Procedure Rules to allow the prayer to settle the decretal sum in instalments. The Respondent cited *Keshvaji Jethabhai & Bros Ltd v Karuga & Ar* (2023) KEELRC 20426 (KLR).

6. The Claimant filed his submissions on 22 September 2025, urging that since the Motion was presented 11 months after judgment, it was a knee-jerk reaction and the conduct of the Respondent did not favour the grant of the

orders. The Claimant cited *Winfred Nyawira Maina v Peterson Onyiego Gichana* (2015) eKLR.

7. The Court has considered the Motion, affidavits and submissions.

8. The Respondent was seeking an exercise of the Court's discretion.

9. The judgment in question was delivered on 2 August 2024. The Respondent did not move the Court until after the Claimant had moved to execute. A proclamation had been made. The Respondent did not attempt to explain why he only moved the Court after execution had commenced or why he did not approach the Claimant in the first instance to indulge him.

10. The Respondent adverted to financial challenges but did not place before the Court any material upon which the Court could conclude that he was facing financial

difficulties, making it difficult for him to settle the decretal amount in a lump sum.

11. The Respondent was expected to demonstrate financial stress, good faith and bona fides. In other words, the Respondent should have shown sufficient cause.

12. The Motion filed in Court on 26 June 2025 is found without merit.

Orders

13. The Motion dated 24 June 2025 is dismissed with costs.

Delivered virtually, dated and signed in Nairobi on this 13th day of November 2025.

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Radido Stephen, MCI Arb

Judge

Appearances

For Claimant

Waithaka &
Partners Advocates

For Respondent

Gitonga & Tollo

Advocates LLP

Court Assistant

Wangu

EMPLOYMENT AND LABOUR RELATIONS COURT



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