



**Republic v Municipal Council of Mombasa; Chogo & 3 others (Ex parte Applicants);  
African University Trust of Kenya (Interested Party) (Environment and Land Miscellaneous  
Application 103 of 2012) [2025] KEELC 7718 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7718 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 103 OF 2012  
YM ANGIMA, J  
NOVEMBER 6, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MUNICIPAL COUNCIL OF MOMBASA ..... RESPONDENT**

**AND**

**BRONSON HARE CHOGO ..... EX PARTE APPLICANT**

**ONESMUS MANGARO ..... EX PARTE APPLICANT**

**PAULINE KANYORA ..... EX PARTE APPLICANT**

**MAURICE SIMON OCHIENG ..... EX PARTE APPLICANT**

**AND**

**AFRICAN UNIVERSITY TRUST OF KENYA ..... INTERESTED PARTY**

**RULING**

1. By a notice of motion dated 03.06.2025 expressed to be filed pursuant to Article 159 of *the Constitution* of Kenya, 2010, Section 3 and 3A of the *Civil Procedure Act*, Cap 21, Order 21, Rule 12, Order 22 Rule 22, Order 51 Rules 1 and 3 of the Civil Procedure Rules, Laws of Kenya, the 1<sup>st</sup> and 2<sup>nd</sup> ex parte applicants sought leave of court to liquidate the decretal amount by monthly instalments of Kshs, 10,000/= until payment in full.
2. The application was based on the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 1<sup>st</sup> applicant, Branson Hare Chogo, on even date. The applicants



contended that they were unable to settle the interested party's costs of Kshs.399,565/= in lump sum due to financial difficulties hence the application.

3. The 1<sup>st</sup> applicant pleaded that he was a subsistence farmer and that the 2<sup>nd</sup> applicant was an employee of the county government who had not been paid his salary for a long time. It was thus the applicants' case that unless they were granted leave to pay the decretal amount by instalments they stood to suffer substantial loss and damage if the interested party proceeded with execution.
4. The interested party filed a replying affidavit sworn on 11.07.2025 in opposition to the application. It was contended that the proposed monthly instalments of Kshs. 10,000/= were very meagre and that the applicants had not even offered to pay a fair portion of the decretal amount at once. The interested party further stated that the applicants had not satisfied the principles for the grant of leave to pay by instalments. As a result, the court was urged to dismiss the application with costs.
5. When the matter was listed for inter partes hearing it was directed that the application shall be canvassed through written submissions. The record shows that the interested party filed submissions dated 22.07.2025 whereas the applicants' submissions were not on record by the time of preparation of the ruling.
6. The court has considered the material and submissions on record. Order 21 Rule 12 (2) of the Civil Procedure Rules provides that;

“After passing of any such judgment or 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”.
7. The interested party referred to the case of AstraZeneca UK Limited vs Macnaughton [2016] eKLR on the meaning of “sufficient cause” within the meaning of Order 21 Rule 12 of the Civil Procedure Rules. It was submitted that the following factors ought to be considered on such application;
  - a. The circumstances under which the debt was contracted.
  - b. The conduct of the debtor.
  - c. The debtor's financial position.
  - d. His bona fides in offering to pay a fair portion of the debt at once.
8. The interested party submitted that the applicants had not demonstrated sufficient cause to warrant payment of the decretal amount by instalments. It was further submitted that the applicants had failed the bona fides test by failing to offer or tender payment of a fair portion of the decretal amount at once hence they ought not to be granted any form of indulgence.
9. The court is of the view that although the applicants have not made or offered to make a lumpsum deposit, they should be accorded a chance to liquidate the decretal amount by instalments. It would appear from the material on record that they did not sue the interested parties in the proceedings. In fact, it would appear that they opposed the joinder of the interested parties in the judicial review proceedings.
10. The interested party has not discounted the 1<sup>st</sup> applicant's claim that he is a peasant who relies on subsistence farming for his survival. Although the 2<sup>nd</sup> applicant did not provide details of his



employment he should not be precluded from settling the taxed costs by reasonable instalments. There is nothing untoward in the applicants' conduct of filing a reference against the taxing officer's decision in the first instance. They were simply exercising their legal rights of challenging the award by the taxing officer. Indeed, they were successful in their reference with the consequence that the interested party's bill of costs had to be taxed afresh before a different taxing officer.

11. The court is, however, unable to agree with the applicants' proposal to liquidate the decretal amount by monthly instalments of Kshs.10,000/=. The proposed figure is so low and it would take several years to settle the outstanding debt. The court is of the view that payment of monthly instalments of Kshs.30,000/= would be reasonable in the circumstances bearing in mind that the decretal amount could be in the region of the 400,000/=.
12. The upshot of the foregoing is that the court is inclined to allow the applicants' motion dated 03.06.2025 in the following terms;
  - a. The 1<sup>st</sup> and 2<sup>nd</sup> applicants are hereby granted leave to liquidate the decretal amount by monthly instalments of Kshs.30,000/= with effect from 01.12.2025 until payment in full.
  - b. In default of payment of any single instalment on the due date, the entire amount then outstanding shall become immediately due and payable and the interested party shall be at liberty to proceed with execution in the normal manner.
  - c. Each party to bear their own costs.

Order accordingly

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence

Gillian – Court Assistant

Ms. Takah for the ex parte applicants

No appearance for the respondent

Mr. Karina for the interested party

