

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. 1992 OF 2015**

**BONIFACE KAMAMI MWANGANGI.....**  
**CLAIMANT/RESPONDENT**

**VERSUS**

**KIKIMA FARMERS**  
**CO-OPERATIVE**  
**SOCIETY.....RESPONDENT/APPLICANT**

**RULING**

- 1.** This ruling relates to a Notice of Motion application filed by the Respondent/Applicant dated 5<sup>th</sup> June, 2025, brought pursuant to Sections 1A, 1B, 3A, and 66 of the Civil Procedure Act, and Orders 22, 40, and 51 of the Civil Procedure Rules. The Respondent/Applicant seeks orders that: -
- i. Spent
  - ii. Spent
  - iii. Spent
  - iv. An order do issue allowing the Applicant to pay the judgment sum in installments of Ksh.50,000/ = every harvest cycle.
  - v. That an order do issue stopping the running of the interest on the decretal sum until payment in full.
  - vi. Costs of this application be in cause.

2. The application is supported by grounds on the face and the affidavit of **Nzau Masai**. The Applicant avers that this Honourable court rendered a judgment against the Applicant herein on 30th November, 2023, and that at the time of rendering the judgment, the Applicant was financially incapacitated and unable to settle all the accruing debts as its production had greatly dropped due to low production and low prices from coffee auctions.
3. The Applicant further states that the society is in financial distress due to its ballooning debts amounting to Kenya shillings one hundred and six million, four hundred and thirty-two thousand, two hundred and forty-seven shillings and fifty-three cents (Kshs.106,432,247.53/=) .
4. It is the Applicant's position that the society is on its knees, and the farmers are under an interim management committee, and the county government has embarked on a plan to revive it and clear its debts. It avers further that the society has a plan in place to pay the judgment debtor from the meager earnings and collections from the sale of coffee from the two production cycles in a year.
5. It is their position that, as a show of goodwill and good faith, the Applicant has already settled part of the decretal sum, whereby the Decree Holder has collected a total of Kshs.50,000/=.
6. The Applicant avers that the persons cited as Judgment Debtors, namely **Richard David** and **Idris Mutisya**, are

currently serving in an acting capacity and are not the substantive office holders.

- 7.** It avers further that Richard David, one of the persons cited, is not the General Manager and therefore has no direct obligation arising from the decree, while Idris Mutisya is not the Secretary of the Society and therefore has no direct obligation arising from the decree.
- 8.** The Applicant states that the Notice to Show Cause is therefore premature, misconceived, and an abuse of the court process, and that it is in the interest of justice that the said Notice be set aside.
- 9.** The Claimant/Respondent opposed the application vide a replying affidavit sworn by the Claimant/Respondent on 17<sup>th</sup> June, 2025. The Claimant argues that the Judgment Debtor/Applicant unlawfully terminated his employment after over 32 years of service, and that this termination gave rise to the current suit.
- 10.** He avers that after diligently prosecuting the matter for 8 years, judgment was delivered on 30<sup>th</sup> November 2023, where he was awarded Kshs.907,125 plus interest and costs. He states that the party-and-party Bill of Costs was subsequently taxed at Kshs.561,516.52 on 30<sup>th</sup> July 2024.
- 11.** It is his position that, despite numerous written demands from the Claimant/Decree Holder's advocates, the Judgment Debtor/Applicant has failed to settle the decretal sum. He states that the Judgment Debtor/Applicant has continually

frustrated his efforts to enjoy the fruits of the judgment, and the decretal amount has now increased to Kshs.1,642,510 due to the accruing interest. It is his position that due to the lack of cooperation, Notices to Show Cause were issued against the Judgment Debtor's officials.

**12.** The Claimant/Decree holder states that the Respondent/Judgment Debtor's proposed payment plan of Kshs.50,000 per harvest cycle is unreasonable and made in bad faith, as it would take over 16 years to clear the decretal amount.

**13.** It is his contention that he was not listed as a creditor in the Judgment Debtor's alleged list of creditors and debtors, further indicating malice on the part of the Respondent. He asserts that the Judgment Debtor possesses numerous properties that could be liquidated to settle its liabilities, and that the request to stop the accrual of interest is termed malicious and aimed at defeating a lawful judgment.

**14.** The Claimant states that it is willing to accept settlement in two equal instalments within six months, or an immediate payment of Kshs.1 million, followed by three equal monthly instalments.

**15.** It is the Claimant's position that the application is an abuse of the court process and reiterates that a successful litigant is entitled to enjoy the fruits of judgment.

**16.** It is his further position that the Judgment Debtor has not provided sufficient grounds for the orders sought, nor have its officials shown cause why they should not be committed to civil jail.

**17.** The Claimant/Respondent prays that execution be allowed to proceed unless a reasonable payment plan is adopted.

**18.** Parties were directed to canvass the application by way of written submissions.

### **Determination**

**19.** The issues that present for determination are:

- i. Whether the Respondent/Applicant should be allowed to pay the decretal sum through instalments
- ii. Whether the court should issue an order stopping the running of the interest on the decretal sum

### **Whether the Applicant should be allowed to pay the decretal sum through instalments**

**20.** The applicant herein owes the Claimant a total of Kshs.1,642,510, comprising the award, costs of the suit, and interest thereon. The judgment in issue was entered against the Applicant in November 2023, and since the entry of the said judgment, the Applicant has only paid Kshs.50,000/- towards the satisfaction of the decretal sum.

**21.** Order 21 Rule 12 of the Civil Procedure Rules, states:-

***“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.”***

22. An order to settle a decretal sum in instalments is a discretionary power of the Court. 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.**

**23.** It is evident that the court may allow payment of a decretal amount by instalments if the Applicant demonstrates sufficient cause and good faith.

**24.** The Applicant proposes to pay Kshs.50,000 every harvest cycle, and it is stated that there are two cycles per year, meaning the payment the Applicant proposes is Kshs.100,000 per year. At a decretal sum of Kshs.1.64 million, repayment would take 16 years or more. This no doubt confirms the Claimant/decreed holder's objection to the Applicant's proposed payment plan.

**25.** The Applicant's proposal is, in my view, grossly unreasonable and does not reflect a genuine intention to satisfy the decree. The Claimant/Decree holder's submission that he was not listed as a creditor in the Judgment Debtor's alleged list of creditors and debtors, equally confirms his assertion of malice on the part of the Respondent.

**26.** Further, the decree holder's counter proposal of two equal instalments within six months or Kshs. 1 million upfront, with the remainder in 3 instalments, appears reasonable, but the court would only consider it if the debtor had demonstrated capability. In ***Rajabali Alidina v Remtulla Alidina [1961] EA 565***, it was held that the court must

consider the debtor's ability to pay and the reasonableness of the proposal.

27. In light of the foregoing, and considering that the Applicant's proposal is grossly unreasonable and tainted with bad faith, I proceed to decline the application to pay the decretal sum in instalments.

**Whether the court should issue an order stopping the running of the interest on the decretal sum**

28. The interest that has accrued in the matter and which indeed continues to accrue was part of the judgment rendered in November 2023 in this matter.

29. Section 26 of the Civil Procedure Act provides thus on payment of interest:-

***“Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to***

***the date of payment or to such earlier date as the court thinks fit.”***

- 30.** Generally, courts rarely interfere with decretal interest, except in cases of manifest injustice, mistake, or unconscionable rates. In ***Gatobu M’ibutu Karatho v Christopher Muriithi Kubai [2014] eKLR***, it was held that courts lack the basis to halt accrual of decretal interest without compelling reasons.
- 31.** The Applicant’s request to halt further accrual of interest in this matter is based solely on financial hardship and lack of revenue. Halting interest would, in my view, unfairly prejudice the decree holder who has waited for over 8 years for judgment and another two years post judgment for settlement.
- 32.** I therefore find and hold that financial distress alone is not a sufficient ground to stop interest.
- 33.** In whole, I find the Applicant’s motion devoid of merit and is hereby dismissed with no orders on costs.
- 34.** The Claimant/Decree holder is at liberty to take a date for the hearing of his notice to show cause.
- 35.** Orders accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN  
COURT AT NAIROBI THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**C. N. BAARI  
JUDGE**

**Appearance:**

N/A for the Claimant/Decree Holder

Mr. Mutava present for the Respondent/Applicant/JD

Ms. Esther S-C/A