



Mbiu v Kenyatta National Hospital (Anti-corruption and Economic Crimes Miscellaneous E010 of 2025) [2025] KEHC 17013 (KLR) (Anti-Corruption and Economic Crimes) (19 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17013 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES MISCELLANEOUS E010 OF 2025
LM NJUGUNA, J
NOVEMBER 19, 2025

BETWEEN

ERIC NGUKU MBIU APPLICANT

AND

KENYATTA NATIONAL HOSPITAL RESPONDENT

RULING

1. The applicant has moved this court by way of the Notice of Motion dated the 23rd of July, 2025 brought under Order 21 Rule 12 of the Civil Procedure Rules and Sections 1A,1B, and 3A of the [Civil Procedure Act](#). It is premised on the grounds set out on the body of the same, and it is supported by the annexed affidavit sworn by the applicant. Through the application, the applicant is seeking for the following Orders;
 1. Spent.
 2. That the applicant/Ruling Debtor be granted leave to settle the decretal amount by way of monthly instalments of Kshs.53,829.50 per month for a period of 12 months
 3. That costs of this application be provided for.
2. It is the applicant's case that judgement was on the 26th March, 2025, entered in favour of the Decree Holder for a sum of Ksh.645,954.05 inclusive of interest. That he does not dispute the said judgement and he is fully committed to paying the decretal sum in full.
3. That due to prevailing economic challenges and personal financial constraints, he is currently unable to raise the entire decretal sum in a lumpsum but he remains committed to settling the said amount in



- full and respectively seek the indulgence of this Honourable court to be allowed to do so by reasonable monthly instalments of Ksh. 53,829.50 commencing on 1st August, 2025 over a period of (12) months
4. That unless the court grants this application for payment by instalments, he is at risk of suffering immense hardship as proclamation Notice has already been issued, and warrants of attachment have been obtained and issued against him with a view to executing the Decree herein.
 5. He seeks for this Honourable Court's indulgence to allow him to settle the decretal sum by instalments so as to avoid execution, which would cause undue hardship to him and his dependents.
 6. The application is opposed vide a replying affidavit sworn by Calvin Nyachoti. He states that the Bill of costs was properly taxed at Ksh. 645, 954.05 in favour of the respondent. That the application is brought in bad faith and the same is an afterthought meant to delay the respondent from enjoying the fruits of the judgement.
 7. The respondent contends that the application does not meet the requirements provided under Order 42 Rule 6 of the Civil Procedure Rules for a stay of execution to be granted. That though the applicant has admitted owing the decretal sum, he has not placed before this court any cogent evidence of his inability to pay the sum in full, and that mere allegations of financial hardship is not sufficient ground to stay execution.
 8. Further, that the applicant is a person of means as evidenced by the assets listed in the proclamation. That the applicant has not tendered or offered any security for the due performance of the decree and has not demonstrated any substantial loss that he stands to suffer if the stay of execution is not granted.
 9. The respondent avers that the decretal sum is public funds belonging to a national referral hospital, which the respondent illegally and un procedurally transferred to himself and his company. As such, pro-longed delay in its recovery directly affects the provision of essential health services to the public.
 10. That the applicant's proposal to liquidate the decretal sum in twelve monthly instalments is unreasonable, prejudicial and inequitable as it unfairly delays the respondent from receiving public funds.
 11. The application was disposed of by way of written submissions.

Applicant's Submissions

12. The applicant submits that he is currently facing financial difficulty due to prevailing economic hardships and personal circumstances, making it impracticable to pay lump sum at once. Further, the applicant submits that he has proposed a payment plan and communicated the same to the respondent, thus demonstrating a willingness to meet the judgement debt in full, albeit in a structured manner.
13. That Order 21 Rule 12(2) vests the court with wide discretion to assess the particular circumstances of each case and determine whether to grant indulgence to judgement debtor. Reliance was placed on the case of Winfred Nyawira Maina Vs Peterson Onyiego Gichana (2015) KEHC 7150 (KLR) in which the court held that the power to order payment by instalments of decretal amounts is purely a matter of discretion by the court, and that of Lavington Security Limited vs Nairobi City Water & sewerage Company Limited (2014) KEHC 8722 (KLR) which was quoted in the case of Freight Forwarders Limited vs Elsek & Elsek (k) Limited (2012) eKLR.
14. The applicant has submitted that the proposed instalment plan of Ksh. 53, 829.50 per month for 12 months is reasonable and realistic, ensuring the respondent will receive the full decretal sum within a definite period. That this structured proposal pursues a fair and balanced approach that protects the



interests of both parties and avoids unnecessary hardship while guaranteeing full settlement without frustrating or delaying the administration of justice.

15. The applicant has invited the court to consider the overriding objective under Section 1A and 1B of the *Civil Procedure Act*, which require that civil proceedings be conducted justly, expeditiously and in a manner that ensures proportionality and fairness.
16. He further submits that he has demonstrated sufficient cause under order 21 Rule 12 and that this is a proper case for the court to exercise its discretion in favour of allowing settlement of the decretal sum by monthly instalments. That the applicant has approached the court in good faith, and has not disputed the decretal sum and has proposed a structured repayment plan that aligns with his financial limitation.
17. That the applicant is apprehensive that unless a stay of execution is granted, the execution process already initiated will proceed, resulting in irreparable harm thus rendering the pending application nugatory. That the threat of property is real and imminent and the applicant stands to suffer substantial loss.
18. The applicant submits that the respondent will not suffer any prejudice if the orders are granted as the applicant's proposed instalments arrangements if granted, would ensure that the decretal sum is fully settled within a year thus securing the respondent's interests.

Respondent's Submissions

19. The respondent has submitted that the debt herein accrued from the judgement delivered by the High court in HCACECS No. E002 of 2024 on the 18th July, 2024 in which the court ordered that the costs be borne by the applicant herein who was the respondent in that case. That upon delivery of the said judgement, the respondent urged the applicant to deposit the costs into the respondent's account but the applicant failed and/or refused to do so or to communicate his alleged inability to pay the amount, not until he was served with a proclamation Notice and warrants of attachments on the 15th July, 2025.
20. The respondent contends that filing of the present application is a delaying tactic to frustrate the respondent from enjoying the fruits of its judgement. Reliance was placed on the case of Mungatana Vs Standard Limited & 3 others (2025) KEHC (KLR), on the court's discretionary power to set aside or vary an order, judgement or any consequential decree or order.
21. The respondent submitted on the principles for exercise of the discretion whether to order payment in instalments or not as espoused in the case of Bernadette Namajanja vs Nick Owour t/a Lake Motors Garage (2020) eKLR and contended that the applicant has not provided to this court any sufficient material to prove that he is a man of no means with an inability to pay the decretal sum at once. That he has only merely indicated that he is unable to pay the decretal sum at once due to personal financial difficulties which is just a mere allegation.
22. On the issue of stay of execution, the respondent has submitted that the applicant has not demonstrated that he will suffer any substantial loss as there is no pending appeal, and his reference was dismissed by the court. That to the contrary, it is the respondent who will suffer loss if the applicant is allowed to pay the decretal sum by instalments. The applicant relied on the case of Butt Vs Rent Restriction Tribunal (1982) LKR 417 as relied upon in the case of Kibera Vs Khandi (2025) KEHC 725 (KLR).
23. The respondent further submitted that for the court to grant an order for stay of execution, it is paramount that the applicant first gives a clear guarantee of security. The case of Focin Motorcyce Co.



Limited vs Ann Wambui Wangui cited in the case of Arun C Sharma vs Ashana Raikundalia T/A Rairundalia & Co. Advocates was relied on to support that proposition.

24. The respondent states that if the applicant herein had proposed to provide security, this would have been an act of good faith and would not appear as denying the respondent the fruits of its judgement. That despite several reminders to deposit the costs into the respondent's account, the applicant has not only failed, neglected and/or refused to make good the payment but has also failed to communicate or respond to the several letters by the respondent.
25. It is also the respondent's contention that the applicant had the opportunity for over one year to propose payment plan but did not. He proceeded to make a proposal after he realized that execution of the decree was imminent. That, for over a year, and even after filing the application herein, the applicant had not begun to pay the decretal amount as a show of good faith.
26. The respondent states that the applicant has not provided any material facts to prove that he has the ability to pay the decretal sum in instalments, and he has also not demonstrated that he owns any property or has funds to deposit as security. That this causes a great risk to the respondent, who if stay orders are granted, might lose the possibility of recovering the decretal sum entirely.
27. The respondent further contends that if the applicant is allowed to pay the decretal sum over twelve months' instalments, the respondent will be deprived of the fruits of the judgement for unduly long period, and being a public Hospital facility, it will continue to accrue losses as long as the costs in this matter are not recovered.

Analysis and Determination

28. The court has considered the application and all the material that has been placed before it, including the written Submissions. The applicant has sought for leave to settle the decretal sum by way of monthly instalments of Ksh. 53, 829.50 for a period of 12 months. The first Prayer on stay of execution pending the hearing and determination of this application is now spent.
29. In my considered view, the only issue for determination is whether the applicant has shown sufficient cause to justify the granting of the orders sought herein.
30. The application is mainly brought under order 21 Rule 12 of the Civil Procedure Rules which states;
31. This provision gives the court the discretion to allow payment of decretal sum by instalments if sufficient cause is shown. In the case of Winfred Nyawira Maina Vs Petreson Onyiego Gichana (2015) KEHC 7150 (KLR) the court stated;

“Therefore, the power to order payment by instalments of the decretal amount is purely a matter of discretion by the court. Except. The exercise of discretion is circumscribed; sufficient cause must be shown and the indulgence to pay by instalments may be on such terms that the court thinks fit. The onus of establishing sufficient cause rests on the applicant. See the case of JABALI ALIDINA Vs LENTURA ALIDINA (1961) EA 565 at page 566 that:- “All commentators on the Civil Procedure Code agree that the court's discretion to order payment of the decretal amount in instalments is one which must be exercised in a judicial and not an arbitrary manner. The onus is on the applicant to show that he is entitled to indulgence under this rule.”
32. The court in the case of Lavington Security Limited Vs Nairobi City Water & Sewerage Co. Limited (2014) KEHC 8722(KLR) while quoting the case of Freight Forwarders limited vs Elsek & Elsek (K)



LTD eKLR narrowed the principles as regards to what amounts to “sufficient cause” to include the following;

- a. The debtor is unable to pay in lump sum
 - b. The debtor can pay by reasonable monthly instalments
 - c. The application is made in utmost good faith.
33. Similarly, the court in the case of *Kabaru & another vs Maina* (miscellaneous Civil application E172 of 2023 (2025) KEHC 4785 (KLR) (Civ) 6 March 2025 emphasized that the court must be satisfied that a sufficient reason exists for granting such relief, based on the particular facts of the case. The court relied on the case of *Keshvaji Jethabhai & Brothers Limited Vs Saleh Abdulla* (1959) EA 260 on the principles that ought to guide the court namely;
- i. The circumstances under which the debt was contracted
 - ii. The conduct of the debtor
 - iii. The debtor’s financial position
 - iv. The bona fides of the debtor in offering to pay a fair proportion of the debt.
34. Being guided by the principles hereinabove, the court notes that the debt accrued from the judgement that was delivered on 18th July, 2024. In that case, Asset Recovery Agency had filed an application seeking for orders that the funds held in the applicant’s account in the sum of Ksh.14, 280,345.80ct and Ksh. 358, 556.33 be declared as proceeds of crime and be forfeited to the Government. The respondent successfully defended the matter and the court declared that the funds rightfully belonged to the Hospital. The applicant was condemned to pay costs which the Taxing Master taxed at Ksh. 645,954.05
35. From the date the judgement was delivered, the applicant did not make any effort to liquidate the decretal sum or even approach the respondent with a proposal on how to pay the money until the respondent was forced to file a Bill of costs for taxation which was eventually taxed to the tune of Ksh. 645,959.05. Even after the Bill was taxed, he waited until his properties were proclaimed after warrants of attachment were issued on the 15th July, 2025 to move to court with this application.
36. The applicant avers that due to the prevailing economic challenges, he is currently facing financial hardship, rendering him unable to liquidate the full sum in a lumpsum. He has made a proposal to liquidate the decretal sum of Ksh.645,954.05 through monthly instalments of Ksh.54, 829.50 over a period of 12 months. The respondent has opposed the application and is not agreeable to the proposal that has been made by the applicant.
37. The burden of proof lies on the applicant to prove to the court that he is a man of no means and has no ability to pay the decretal sum at once. The applicant has merely indicated that he is unable to pay the decretal sum at once due to personal financial difficulties, which is a mere allegation and not supported by any evidence or material facts. It was just a mere statement and nothing more!
38. As the court stated in the case of *Diamond Star General Forwarding Limited vs Ambrose DO Rachier* (2018) eKLR,

“That my view is that an applicant who wishes a court to exercise its discretion and order payment of a decretal sum by way of instalments must be very candid with the court. Such an applicant must present to the court sufficient material to show that he/she is a person of no means, that whatever income she or he has is lawfully committed elsewhere. He or



she must disclose to the court all his/her means and explain to the court why the proposed instalments are the best option available. Accordingly, the burden is on the applicant to prove/show that he/she deserves the orders sought”.

39. In this case and for the reasons that the court has granted, the applicant herein has failed to convince the court that he is deserving of the orders that he has sought.
40. In the end, I find that the application has no merits and the same is dismissed with costs.
41. It is ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 19TH DAY OF NOVEMBER, 2025

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L.M. NJUGUNA

JUDGE

In the presence of:-

M/s Kimathi for the applicant

Miss Muigai for the Respondent

Court assistant - Adan

