



**Bunsons Travel Services Limited v Mwangi (Employment and Labour Relations Cause E502 of 2020) [2025] KEELRC 3396 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3396 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E502 OF 2020  
NJ ABUODHA, J  
NOVEMBER 28, 2025**

**BETWEEN**

**BUNSONS TRAVEL SERVICES LIMITED ..... CLAIMANT**

**AND**

**DAVID WACHIRA MWANGI ..... RESPONDENT**

**RULING**

1. The Applicant filed application dated 19<sup>th</sup> July, 2024 which is brought under sections 1A, 1B and 3A of the Civil Procedure Act, Order 22 Rules 1, 22, 25 & 59, Order 27 Rule 1, Order 42 Rule 7, Order 51 Rule 1 of the Civil Procedure Rules.
2. The Applicant sought for orders that:
  - a. Spent
  - b. Spent
  - c. An order do issue setting aside the Warrants of Attachment issued on 11<sup>th</sup> July, 2024.
  - d. An order do issue for the outstanding decretal sums for immediate payment of Kshs 200,000/= to the decree Holder and Nine (9) monthly payments of Kshs 200,000/= each and one final installment of Kshs 280,275.55/= thereafter until payment in full on the balance.
  - e. An order do issue for a permanent stay of execution subject to the judgment Debtor/Applicant complying with the Orders sought above with costs.
3. The application was supported by the grounds set out on the face of the application herein and the affidavit of JULIE DABALY SCOTT the Managing Director of the Applicant herein who averred that:



- a. The decree herein as extracted by the advocates for the Claimant is for Kshs 2,080,275.55/= and the Applicant proposes to liquidate the decretal sum as shown in 2(d) above.
  - b. The Respondent/Applicant is a travel Agency whose business has been negatively affected since COVID-19 period and more recently by the continued protests in the country that has further led to a decline of travelling clients.
  - c. For the foregoing reasons are sufficient cause why execution should not issue and urged the court to set aside the Warrants of Attachment issued on 11.07.2024.
  - d. The Applicant will suffer great loss and prejudice if the warrants of Attachment are not set aside and the Applicant is willing to satisfy the conditions of stay that may be set by this court.
  - e. The application has been filed without any delay.
4. In reply the Claimant filed his Replying Affidavit sworn on 16<sup>th</sup> May,2025 by Danson M. Maina Advocate on record for the Claimant herein who averred that: \_
- a. The Applicant made the proposal to liquidate the Decree amount in her application on 19<sup>th</sup> July, 2024 and the court issued its directions on 19<sup>th</sup> July,2024 that the Applicant makes an initial payment of Kshs 200,000/= upfront and the matter to be listed for further directions/orders on 30<sup>th</sup> September, 2024.
  - b. On the said 30<sup>th</sup> September, 2024 the court directed the parties to negotiate agreeable instalment payments and report back to court with a consent. That the matter has been listed before the court for tracking of the progress of the negotiations for seven subsequent times and there has been nothing to report.
  - c. That it is apparent that the parties are not able to agree and invites the court to make a ruling on the same. That the Applicant has been very stubborn and rigid in the negotiations.
  - d. That the Applicant's application was not supported by any evidence and reasons that its business was negatively affected by the COVID-19 pandemic were not corroborated. Even if the court was to take judicial notice of the same it is now over 5 years since the pandemic and it was implausible for the Applicant to continue pleading the same without justifying or placing material before the court for interrogation. That without any evidence the same does not amount to sufficient reason/cause for non-payment of the Decretal sum.
  - e. That making the proposal to pay the decretal sum in instalments does not entitle the Applicant to the same. The Applicant has to show sufficient cause, there must be a genuine and reasonable cause why the decree cannot be met immediately in full. The Applicant's financial position has not been revealed to this court as the Applicant's averment that it has cash flow constraints is not supported by any cogent evidence.
  - f. That the application is not brought in good faith, lacks merit and the same is merely intended to deny the Claimant immediate access to the fruits of his judgment. That bit was the Applicant's proposal that upon payment of initial sum of Kshs 200,000/= the balance of Kshs 1,880,275.55 /= would be liquidated in nine monthly instalments of Kshs 200,000/= and a final instalment of Kshs 280,275.55/= on the 10<sup>th</sup> instalment.
  - g. That after paying the initial instalment of Kshs 200,000/= on 25<sup>th</sup> July,2024 the Applicant has never made any other payment. The Applicant has not shown bona fides considering the fact that judgment in this matter was delivered on 28<sup>th</sup> September, 2023 after litigating for three



years and the Applicant never preferred an appeal. The conduct of the Applicant does not speak to its prayers.

- h. The Claimant avers that the proposal by the Applicant is inordinately too low and it is made to deny the Claimant the enjoyment of the fruits of his judgment.
  - i. The orders sought herein are discretionary and the court is enjoined to exercise its discretion on the basis of the facts and circumstances presented before it by the Applicant being aware that a decretal sum remains unsatisfied and the Claimant has a judgment in his favour. The conduct of the Applicant does not warrant this court to exercise its discretion in its favour.
  - j. The Applicant's application is blatant abuse of the process of court and the same ought to be dismissed with costs and the Claimant be allowed to execute the decree herein until payment in full.
5. The Application was disposed of by written submissions.

### **Applicant's Submissions**

- 6. The Applicant through its Advocates KTK Advocates filed its written submissions dated 28<sup>th</sup> May, 2025 and on the sufficient cause counsel in addition to the COVID -19 and protests effects on its financial means submitted that the module of payment by installment proposed in the application of immediate payment of Kshs 200,000/= which has already been paid to the Respondent followed by the proposed installments was reasonable payment.
- 7. Counsel submitted that the Applicant's financial position at the moment does not give it the privilege of paying the entire decretal sum in one lumpsum payment and it is for this reason that the Applicant prays that this court reasonably applies its discretion and grants the Applicant order 4 and Order 5 of its application as it will be just and fair for both the Applicant and the Respondent.
- 8. Counsel relied on Order 21 Rule 12(1) and (2) of the Civil Procedure Rules and the case of Diamond Star General Trading LLC V Ambrose D O Rachier carrying on business as Rachier & Amollo Advocates (2018) eKLR where court allowed payment of decretal sum in installments. That the judge relied on the case of Keshvaji Jethabhai & Bros Limited v Saleh Abdulla (1959) EA 260 on the principles which guide the court in exercise of discretion.
- 9. Counsel further relied on the case of Nicholas Gitonga Murongi vs Susan Wairimu & 4 Others (2021) eKLR where the court quoted the case of Rajabali Alidina v Remtulla Alidina & Another (1961) EA 565 on issues for considerations in an application seeking to settle the decretal sum via installments.
- 10. Counsel relied on the case of Freight Forwarders Ltd v Elsek & Elsek(K) Ltd (2012) eKLR where the court narrowed down the principles as regards to what amounts to sufficient cause in an application for payment of decretal sum by installments.
- 11. Counsel finally submitted that in the interest of justice and fairness the application should be allowed and the court to order the Applicant to pay outstanding decretal sum as prayed in the application.

### **Respondent's Submissions**

- 12. The Respondent through his advocates JP Advocates LLP filed his written submissions dated 16<sup>th</sup> May, 2025 and submitted that the test to be applied in an application for payment by installments is well settled by case law. Counsel relied on the case of Keshavji Jethabhai & Bros Limited v Saleh Abdulla (1959) EA 260 cited in Amir Suleiman v Amboseli Resort Limited (2015) KEHC 4696(KLR).



13. Counsel submitted that the primary consideration for allowing payment of a decree by installment is for the judgment debtor to demonstrate bona fides by payment of a fair proportion of the debt.
14. Counsel submitted that on requirement to show sufficient cause there must be a genuine and reasonable cause why the decree cannot be met immediately in full while relying on the above decision of Keshavji.
15. Counsel further relied on a recent decision in Nahashon Maina & 5 Others v Central Park Hotel (2022) KEELRC 818(KLR) to submit that the orders provided by Oder 21 Rule 12 of the Civil Procedure Rules were discretionary and the court need to balance the facts presented by the Applicant while aware the Respondent has a judgment in their favour which remains unsatisfied.
16. Counsel further submitted that the court also stated that the Application must be brought with utmost good faith. Counsel summarized the test the court is to apply in considering applications such as this one that is sufficient cause/reason, circumstances of the case to warrant grant of the reliefs sought, reasonability of the proposal, good faith/conduct of the Applicant and exercise of court's discretion.
17. On sufficient cause counsel submitted that the Applicant failed to demonstrate sufficient cause for its prayers. The Applicant pleaded effects of COVID -19 and protests which were around the time of making its application. The reasons could not be genuine and were farfetched. The Applicant did not attach any evidence to support its argument and how the pandemic affected its inability to pay the decretal sum. The same had to be corroborated by way of producing evidence. Counsel relied on Nahashon Maina case above where the court faced with a similar scenario found it not a sufficient cause.
18. Counsel further submitted that the pandemic was experienced more than five years ago and it was untenable for the Applicant to continue pleading the same as the reason for failure to pay decretal sum in full. Counsel urged the court to find the Applicant with no sufficient cause for grant of prayers sought in absence of any evidence to support their assertions.
19. On the circumstances of the case to warrant grant of the reliefs sought counsel submitted that the Claimant has been waiting to enjoy his employment dues for over five years now and the applicant only paid Kshs 200,000/= denying the Claimant enjoyment of his judgment. That the Applicant has been very stubborn in the negotiations and counsel urged the court in the circumstances and in the nature of claim that prayers sought would be a denial of justice for the Claimant. That the same should be disallowed and the Applicant pays the decretal sum in full.
20. On reasonability of the proposal counsel submitted that the Applicant made the proposal way back in July 2024 when the application was made. That only the initial payment was made and nothing more. The Applicant has been adamant that they would make further payments with leave of the court making the balance of Kshs 1,880,275.55 still due and outstanding.
21. Counsel submitted that if the application was to be allowed the Claimant would wait for another 10 months until the installments are paid despite waiting for one year and seven months and only Kshs 200,000/= has been paid. That the Applicant has not provided any evidence that would enable the court to gauge whether its proposal was reasonable or not. That given the time the Applicant has already taken and made no further payments it should be noted that they have had time to pay or make an improved offer. That the Applicant's offer is unreasonable given the lack of evidence, time lapse and the nature of the claim.
22. On the good faith/conduct of the judgment debtor, counsel submitted that the Applicant's conduct does not entitle it for the grant of the reliefs sought. That the Applicant made a proposal and to date it has not implemented a portion of it. That the Applicant did not need leave or permission of court



to implement a proposal it made itself which points to lack of utmost good faith and abuse of court process to delay making payments as much as possible on the part of the Applicant.

23. On the discretion of the court counsel submitted that given the circumstances of this case the court should exercise its discretion judiciously and in the best interests of justice. There has to be valid and clear reasons upon which discretion can be favorably exercised and the applicant has furnished none.

### **Determination**

24. Order 21 Rule 12 is the guiding law on payment of decretal sum by installments but the Applicant must demonstrate sufficient cause for the court to exercise its discretion in its favour. Case law on the same issue is rich in a number of decisions with the recent case of Nahashon Maina & 5 Others v Central Park Hotel (2022) KEELRC 818(KLR) stating as follows: -

The orders provided for under Order 21 Rule 12 of the Civil Procedure Rules are discretionary and the Court is enjoined to exercise its discretion on the basis of the facts and circumstances presented before it by the Applicant being aware that a decretal sum remains unsatisfied and the Respondent has a judgment in its favour.

25. In the case of Keshavji Jethabhai & Brothers Limited v Saleh Abdulla [1959] E.A. 260 the Court stated as follows regarding sufficient cause:.. Each case must be considered on its merits. Mere inability to pay in full is not sufficient reason for exercise of discretion. The debtor must show his bonafide by arranging prompt payment of a fair portion. Hardship to the debtor might be a factor. The question in each case is whether some indulgence can fairly be given to the debtor without prejudicing the creditor.
26. In this case the Applicant alleged that it was going through financial challenges making it not settle the whole decretal sum in full citing the effects of COVID-19 and protests. Whereas this court takes judicial notice of the effects of COVID-19 pandemic this court notes that it is now 5 years since the pandemic occurred. While protests have been witnessed in the country they do not happen on daily basis. The Applicant ought to have produced its financial records to illustrate that its business was still doing badly due to the pandemic and the protests. The court in the above case of Nahashon Maina found the reason of the COVID-19 pandemic as not a sufficient reason. The Applicant did not adduce any of such evidence and the court finds that the Applicant did not have any sufficient cause.
27. On the reasonableness of the proposal the court notes that the Applicant made the proposal of payment of installments in July 2024 and proceeded to make the initial payment in July, 2024 and nothing more. The Applicant stated that it needed the court's leave to make further installments yet it is the one who made the proposal. If the applicant honoured its proposal, it would by now liquidated the decretal sum in full.
28. The court notes that the Applicant has not improved the proposal since July 2024 over a year ago yet caselaw requires it to make a fair proportion of the same and it has not made any proposal to this court apart from the installments proposed last year. The court balances the fact that the Claimant whose decree remains in his favour and it has not been appealed from needs to enjoy the fruits of his judgment.
29. The decretal sum of Kshs 1,880,275.55/= remains unpaid which are employment dues earned by the Claimant in course of his employment and five years after the termination he is yet to enjoy the same. The court in the above case of Keshavji was clear that the payment by installments should not prejudice the decree holder. The proposal is therefore not reasonable as it means the Claimant will wait longer to enjoy the fruits of his judgment.



30. On the issue of utmost good faith the Applicant alleges that it has already paid the initial deposit of Kshs 200,000/=. As noted earlier the same was done in July, 2024 when the Applicant filed this Application and no further payments have been made. If the Applicant was acting in good faith it should have continued implementing its own proposal and by now the full decretal sum would have been liquidated. It needs no court's leave to implement its own proposal.
31. In *African Banking Corporation Limited v Florence Wangari Wangai* [2012] eKLR the court held as follows\_
- “My view is, 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/he has is lawfully committed elsewhere. He/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 order sought.
32. In the circumstances the Applicant does not deserve the court's discretion to grant the orders sought there being no sufficient cause, no good faith and it having not proposed a fair portion to be paid to the Respondent. The proposal of 10 installments would further delay the Claimant from enjoyment of the fruits of his judgment. The same proposal is not reasonable the Applicant having proposed the same over a year ago and has not implemented the installments. The Applicant should make the balance of the decretal sum of Kshs 1,880,275.55/= in full since the Applicant never adduced any evidence of inability to pay in full decretal sum apart from pleading COVID-19 five years later and protests which this court finds did not constitute sufficient cause.
33. The application is therefore found without merit and is hereby dismissed with costs to the Claimant.
34. It is so ordered

**DATED AT NAIROBI THIS 28TH DAY OF NOVEMBER, 2025**

**DELIVERED VIRTUALLY THIS 28TH DAY OF NOVEMBER, 2025**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

