



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO. 221 OF 2017

FORMERLY MERU HCC.80/2004

M'NYERI M'RIMUNYA.....PLAINTIFF

VERSUS

BETH KAARI1ST DEFENDANT

PRUDENCE MUKIRI.....2ND DEFENDANT

PHARES GITARI NKOROI.....3RD DEFENDANT

RULING

1. This application is dated 6th March, 2019 and seeks orders:

1. That this application be certified urgent and service dispensed with in the first instance.
2. That there be stay of execution of judgment and or order dated 21.2.2019 pending the hearing and determination of this application interpartes.
3. That the honourable court do allow or authorize the judgment/debtor to liquidate the decreed sum of Kshs.485, 191.33 in equal quarterly installment of Kshs.50,000= with effect from 30th April, 2019 and every other subsequent quarterly period until payment in full.
4. The costs of this application be costs in the cause.

2. The application has the following grounds:

- i. On 21.2.2019 the costs of this suit were assessed at Kshs.485,191.33 against the applicant.
- ii. The applicant is unable to settle the full decretal sum of Kshs.484,191.33 all at once.
- iii. Execution of the decreed sum of money may take place any time, hence the urgency of the instant application.
- iv. The orders sought are not likely to prejudice the decree holder.
- v. If orders sought are not granted expeditiously the outcome of this application will be rendered nugatory.
- vi. There is no inordinate delay in filing the instant application.

3. The application is supported by the applicant's affidavit which states:

I M'NYERI M'RIMUNYA of P. O. Box 54 Chuka do hereby make oath and state as follows:-

1. That I am the judgment/debtor herein well versed with the facts of this case hence competent to swear this affidavit.
2. That on 21.2.2019 the party and party bill of cost for defendants was assessed at Kshs.485,191.33 against me.
3. That I am over 80 years old and with no major economic activity or income to enable me raise the above decretal amount assessed all at once.
4. That I am a small scale peasant farmer out of which I earn an average of Kshs.70,000= per year and therefore unable to settle the said decretal amount all at once.
5. That if the orders I am seeking in the instant application is granted, I would be in a position to settle the decretal amount as assessed (sic) above after every other 3 months as proposed.
6. That the judgment creditor have (sic) vowed to execute the order for costs with urgency and therefore unless I am allowed to liquidate the same in installments I am bound to be put to civil jail and/or my property attached in execution thereof thereby rendering me a destitute.
7. That I therefore swear this affidavit in support of my application seeking stay of execution of the judgment/decreet and/or order for costs of the suit and thereafter be allowed to liquidate the same in equal quarterly installments of Kshs.50,000 per every quarter of the year.
8. That all the facts deposed to hereinabove are true to the best of my knowledge, belief and information.

4. I note in the certificate of Urgency the applicant indicates that he is willing to pay the apposite costs. He is, however, asking the court to allow him to pay in installments.

5. I, however, find myself unable to summarily allow this application. The interest of justice requires that the judgment creditors be heard.

6. The following orders are issued: _

1. This application is to be properly served upon the respondents AND the orders issued by the court today are to also be properly served upon the respondents.

2. Parties will come to court for directions on 29th May, 2019.

Delivered in open Court at Chuka this 1st day of April, 2019 in the presence of:

CA: Ndegwa

Majau for the Applicant

P.M. NJORGE

JUDGE