

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONSHIP COURT

CAUSE NO. 774 OF 2017

LOLAINE KIRIGIA.....CLAIMANT/DECREE HOLDER

VERSUS

FIRST DRINKS (K) LIMITED.....RESPONDENT/JUDGMENT
DEBTOR

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. What is before this is the Applicant's application dated 30th July 2025 and supported by the Affidavit of Charity Njoka its Manager. The Application seeks this Honourable Court discretion to allow payment of the decretal sum of Kshs 1,747,294 in 36 monthly installments.
2. The Application is opposed vide grounds of oppositions dated 16th September 2025namely-
 - a) That the Application is an abuse of the process of this Honourable Court, intended only to delay and deny the Respondent the enjoyment of the fruits of her judgment.

- b) That no payment whatsoever has been made by the Applicant towards satisfaction of the judgment/decretal sum since judgment was delivered on 24th June 2024, despite the lapse of considerable time.
- c) That the Applicant has not demonstrated any good faith, willingness, or bona fides in settling the decretal sum either in full or in part since the judgment.
- d) That the Applicant has not placed before this Honourable Court any sufficient cause or justifiable reason to warrant the indulgence sought for payment by instalments.
- e) That the Respondent continues to suffer prejudice due to the Applicant's continued noncompliance with the judgment and further delay in settlement. 6. That the Application is frivolous, vexatious, devoid of merit, and ought to be dismissed with costs to the Respondent.

Decision

3. The application was canvassed by way of written submissions. Only the applicant filed.

Issue-Whether the Court should allow payment of the decretal sum in installments

Applicant's submissions

4. Order 21 Rule 12 (2) of the Civil Procedure Rules 2010 allows the Judgment debtor to file such an application. It provides as follows; "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.” We humbly submit that, whereas the Decree Holder is entitled to the fruits of its judgment, there is sufficient cause as to why the Court should order the decretal amount to be paid in installment. Firstly, the Judgment Debtor is already battling humongous debts with other creditors occasioned by the status of the economy, which has not be favourable to many businesses. One such debt is the Standard Chartered Bank debt of over Kshs 15,359,536.50 (see statement of account). The Decree Holder is keen to settle the Decretal amount and is only seeking a breathing space to restructure its financial status and liquidate the amount in manageable installments that will allow the business to remain a going concern. Were the decree holder to execute its decree in full, it may lead to a total collapse of the business and may in fact not lead to full recovery of the full amount. It is therefore in the interest of both the Judgment Debtor and also the Decree Holder that the struggling status of the company is saved and this will allow the amount to be settled in full. The Applicant is unable to pay the decretal sum in lump sum due to severe financial constraints, but is willing to pay the same in the proposed instalments, which will reduce further costs that may be incurred through the execution process. The Decree Holder alleges that the application is an abuse of court process. That is not the case. The rules committee when making the civil procedure rules had the knowledge that business constraints do happen and thus deemed it fit to allow judgment debtors to come back to the Court to seek for a reprieve by way of such an Application for installments. In the case of *Hildegard Ndelut v Letkina Dairies Ltd & Another* [2005] eKLR, it was stated that:- “A Judgment-Creditor is entitled to payment

of the decretal amount, which he should receive promptly to reap the fruits of the Judgment. The Judgment-Debtor might genuinely be in a difficult position in paying the decretal amount at once. However, he has to show seriousness in paying the amount. In that event he should show his bona fides by arranging fair payment proposals to liquidate the amount”. In this case, the Applicant has shown bona fides by making arrangement to pay almost Kshs 600,000 every year to settle the decretal amount notwithstanding the severe financial constraints it is facing. The proposed period is reasonable, realistic and a clear sign of good faith. The conduct of the Applicant is transparent and its financial position is already before court. It is not making this Application with mala fides and to deny the Decree Holder’s fruits of its judgment. In that regard, the Judgment Debtor/Applicant humbly requests this Honourable Court to allow the Application and result into a win-win situation for both parties.

Decision

5. Order 21 Rule 12 (2) of the Civil Procedure Rules 2010 allows the Judgment debtor to file such an Application. It provides as follows; *“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.”* The applicant seeks the court's intervention to settle the debt by way of 36 installments. It relied on the

decision in the case of Hildegard Ndelut v Letkina Dairies Ltd & Another [2005] eKLR, where it was stated that:- “A Judgment-Creditor is entitled to payment of the decretal amount, which he should receive promptly to reap the fruits of the Judgment. The Judgment-Debtor might genuinely be in a difficult position in paying the decretal amount at once. However, he has to show seriousness in paying the amount. In that event he should show his bona fides by arranging fair payment proposals to liquidate the amount”. It is submitted that the applicant had shown bona fides by making arrangements to pay almost Kshs 600,000 every year to settle the decretal amount, notwithstanding the severe financial constraints it is facing. The proposed period is reasonable, realistic and a clear sign of good faith. The conduct of the Applicant is transparent and its financial position is already before court.

6. This Court entered judgment on 24th June 2024, awarding the Claimant the following: Refund of 3000 deducted as car benefit, 7 months compensation being 210,000* 7=1,470,000, and interest from the date of Judgment and costs. The Decree Holder extracted a decree dated 14th November 2024 together with a certificate of costs. The total amount is Kshs 1,747,294. The Decree Holder herein instituted Garnishee proceedings vide an Application dated 10th July 2025 against the Judgment Debtor/Applicant and attached the Bank Account held with Standard Chartered Bank. The Applicant's account did not have any money and in fact the Garnishee stated the account was withdrawn and that the Applicant is indebted to Standard Chartered Bank to the tune of Kshs 15,359,536.50. The Garnishee Order Nisi was thus discharged.

7. The court finds that the applicant had demonstrated the difficulty in making payment of the decretal sum caused by financial burdens, as evidenced by relying on the affidavit of the Garnishee. The court finds that the 36 installments suggested were not fair payment proposals to liquidate the amount. The judgment creditor is entitled to reap his fruits of judgment, and the court in exercise of power under Order 21 Rule 12 (2) of the Civil Procedure Rules 2010 should ensure fairness to both parties. The court rejects the proposal of 36 installments. The court, being persuaded to believe that the applicant is facing financial difficulties, allows the application, subject to the settlement of the decretal sum in 12 equal instalments, starting on 10th January 2026, and, on default in any instalment, execution to issue.
8. Each party to bear its own costs in the application.
9. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10TH
DAY OF DECEMBER, 2025.**

**J.W. KELI,
JUDGE.**

IN THE PRESENCE OF:

Court Assistant: Otieno

Claimant/applicant – Absent

Respondent- Ndichu h/b Gakunga

ORIGINAL