

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CIVIL APPEAL NO. E011 OF 2025**

**EZEKIEL ROTICH .....APPELLANT**

**- V E R S U S -**

**MERCY CHELANGAT KEMOI (Suing as the Administrator of the Estate of TIMOTHY KIPNGENO KEMOI (DECEASED))**

**(Being an appeal against the Judgment of the Hon. J. M. Munguti (SPM) in Kericho CM's Civil suit No.E238 of 2022 delivered on 2<sup>nd</sup> February, 2025)**

---

**RULING**

1. ***Ezekiel Rotich***, the Applicant herein, took out the motion dated 31<sup>st</sup> July, 2025 and sought for the following orders

***inter alia:-***

***(i) THAT this application be certified as urgent and heard ex parte in the first instance.***

***(ii) THAT pending hearing and determination of this application, this Honourable Court be pleased to issue an order of stay of execution of the Judgment dated 31<sup>st</sup> July, 2025.***

***(iii) THAT this Honourable Court be pleased to grant leave to the applicant to satisfy the decretal sum of Kshs.1,722,666.60 by way of monthly***

***instalments of Kshs.150,000.00 until payment in full.***

***(iv) THAT there be a stay of execution of the Judgment dated 31<sup>st</sup> July, 2025.***

***(v) THAT the applicant be allowed to deposit security as part payment of the decretal sum pending settlement of the balance.***

***(vi) THAT the costs of this application be provided for.***

2. The applicant filed an affidavit he swore in support of the motion. The Respondent filed the summons dated 14<sup>th</sup> August, 2025 to oppose the motion. Parties filed their written submissions.

3. I have considered the grounds stated on the application dated 31/07/2025 plus the facts deponed in the affidavit of support. I have also considered the grounds of opposition and the rival written submissions. The main orders sought is an order for stay of execution of the decree issued on 31<sup>st</sup> July, 2025 and for leave to settle the decretal sum of

Kshs.1,722,666/60 by monthly instalments of Kshs.150,000/=.

4. It is the submissions of the applicant that he is not financially capable of settling the entire decretal sum at once due to lack of a reliable or steady source of income. The applicant further argued that he is the sole bread winner and provider of his family, including school and college going children whose tuition and basic needs must be met. He argued that unless an order for stay is granted, he risks facing imminent execution and severe financial ruin.
5. The respondent on the other hand has urged this Court to dismiss the application stating that if the applicant is granted the orders sought, there will be a considerable delay in concluding this matter.
6. In an application for stay of execution filed under Order 42 rule 6 (2) of Civil Procedure Rules, an applicant must show the substantial loss he would suffer if the order is denied. Secondly, the application must be filed without unreasonable

delay and thirdly that security should be provided for the duo performance of the decree.

7. In the instant application, the applicant has merely stated that he would suffer prejudice if the order for stay is not granted. It is clear in mind of this Court that the applicant has failed to show the substantial loss. There mere fact that one can suffer some inconvenience or prejudice does not amount to substantial.

8. As regards to the prayer to settle the decretal sum by instalments, Order 21 rule 12 (2) of the Civil Procedure Rules lays the requirements which must be met before granting order. A party must show sufficient cause to the Court to enable the Court favour him with the order. The applicant has averred that he can manage to raise Kshs.150,000/= per month. He has stated that if he is asked to settle the decretal sum at once, he will not be in a financial position to do so. The applicant was bound to show by real figures his financial status. It is not enough to merely aver that he is not in a financial position to raise the amount at one.

9. The applicant has proposed to pay a sum that will take more than a year to clear the decretal. In my view, that period is long considering the fact that the applicant has not shown his financial standing. This Court is not satisfied that the applicant is entitled to the order to settle the decree by monthly instalment.

10. In the end, I find no merit in the applicant's application. Consequently, the motion dated 31/7/2025 is ordered dismissed. Each party to bear their own costs in respect of the aforesaid motion.

**Dated, signed and delivered at Kericho this 3<sup>rd</sup> day  
of December, 2025.**

.....  
**J. K. SERGON  
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Nandi holding brief for Mugumya for Appellant

Mwita for the Respondent

