



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
MISC. CAUSE NO. 121 OF 2017

BETWEEN

KAGWIMI KANGETHE & CO ADVOCATES
APPLICANT

VERSUS

MARGARET WANGECI WACHIRA
RESPONDENT

RULING

Introduction and Background

Application dated 9th December 2024:

1. There are two applications for determination. The first is dated 9th December 2024. It is brought by the Respondent, who is the Client in the miscellaneous cause. She seeks leave to settle the decretal sum of Kshs. 538,165/= by first paying a lump sum of Kshs. 500,000/= by banker's cheque within two days of the court's order, with the

remaining balance of Kshs. 38,165/= to be cleared by 31st January 2025.

- 2.** She also proposes to pay the accrued interest and costs in reasonable installments beginning January 2025. Upon payment of the initial Kshs. 500,000/=, she prays that the court set aside the earlier orders of 8th November 2024 directing the disposal of the property known as **Nairobi/Block 104/411**. Finally, that once the decretal sum is fully settled as outlined, she prays that the Advocate be compelled to release the title deed for **Nairobi/Block 104/411** and facilitate the removal of the caution registered against it.
- 3.** The application is opposed by the Advocate through the Replying Affidavit of George Kang'ethe sworn on 4th February 2025. The Advocate explains that judgment was entered against the Client on 8th May 2019 for a principal sum of Kshs. 538,165.30 together with interest at court rates until full payment. Despite repeated demands, the Client failed to settle the debt and instead filed numerous frivolous applications, all of which were dismissed.

4. Consequently, the Advocate sought leave for the attachment and sale of the Client's property, being **Nairobi/Block 104/411**, through a Motion dated 17th May 2022, which the court allowed in a Ruling delivered on 8th November 2024. That Ruling has not been set aside or reviewed, and the Advocate remains entitled to execute it unless the decretal sum and accrued interest are fully paid.
5. The Advocate further maintains that the Client's Motion of 9th November 2024 only sought leave to pay the decretal amount by instalments but did not challenge or seek to stay the earlier Ruling. As of 30th November 2024, the total amount due stood at Kshs. 895,314.82, comprising the principal sum and accrued interest. In addition, the Client owes Kshs. 50,000/= in costs awarded for various dismissed applications. The Advocate acknowledges that although the Client had since paid the principal sum in two instalments (Kshs. 500,000/= on 10th December 2024 and Kshs. 38,165/= on 27th January 2025), she still owes Kshs. 357,149.52 in interest plus the outstanding costs.

6. The Advocate stresses that the decretal sum has been outstanding for nearly six years, making it unfair to grant further extensions of time adding that he rendered legal services long ago, and has been unjustly denied payment. Accordingly, it is his case that the Client is not entitled to the release of the property title until all sums due, including interest and costs, are settled.
7. The advocate further notes that there are parallel proceedings in **HCC Misc. No. 339 of 2017**, where the court ordered the sale of the same property to recover another decretal sum of Kshs. 174,944/= plus interest, totaling Kshs. 286,209/= as of 30th November 2024. That order remains in force, though the Respondent has sought to set it aside, with a ruling pending in February 2025.

Analysis and Determination

8. Having carefully reviewed the pleadings and written submissions of both parties, the central issue that arises for determination is whether the Client has established sufficient grounds to merit the grant of the orders sought.

- 9.** The undisputed position is that a Ruling on Taxation and a Decree issued on 9th May 2019 assessed the amount recoverable from the Client to the Advocate at Kshs. 538,165.30, together with interest at court rates until payment in full. Indeed, The Client herself acknowledges the obligation to pay interest on the decretal sum, as urged by the Advocate in her application and supporting affidavit. She confirms that she does not wish to appeal against the Decree dated 9th May 2019 or the Ruling dated the 8th November 2024.
- 10.** What is particularly disconcerting is that in the submissions dated 20th October 2025, the Client adopts a position that is plainly at odds with her own pleadings and sworn affidavit. Whereas she acknowledged both the existence of the decretal sum and the obligation to pay interest thereon in the application, she contends that the decretal amount has already been fully discharged in her submissions. This inconsistency undermines the credibility of her case.
- 11.** Submissions, however forcefully made, cannot supersede or contradict the pleadings and affidavit

evidence upon which the application is founded. They are not a substitute for evidence and, in this instance, appear to be no more than an afterthought designed to evade the clear obligations previously admitted by the Client. Such a shift in position not only weakens her application but also demonstrates a lack of candour in the manner in which she has approached the court.

- 12.** That said, I agree with the Advocate that, pursuant to ***Order 21 Rule 12(1) and (2) of the Civil Procedure Rules***, this Court is vested with discretion to order that a decretal sum be postponed or settled by instalments, but only where sufficient cause has been demonstrated by the Applicant. Such relief is not a matter of right; rather, it is an indulgence that must be earned through credible justification. This principle was firmly established in ***A. Rajabali Alidina V Remtulla Alidina & Another, (1961) EA 565***, where Law J. outlined the key considerations guiding the court in the exercise of this discretion. Among these are the circumstances under which the debt was incurred, the conduct of the debtor, the debtor's financial position, and the bona fides

of the debtor in offering to pay a fair and reasonable portion of the debt upfront.

- 13.** In **Keshval Jethabhai & Brothers Ltd V Saleh Abdul, [1959] EA 260**, the Court emphasized that mere inability to pay the entire decretal sum at once does not, of itself, constitute sufficient cause for granting indulgence. The debtor is required to demonstrate bona fides, particularly by arranging for prompt payment of a substantial portion of the debt upfront. While the existence of hardship may be a relevant consideration, it is not decisive and the court must balance such hardship against the rights of the decree holder, ensuring that any leniency extended to the debtor does not operate to the prejudice of the party entitled to enjoy the fruits of the judgment.
- 14.** Turning to the circumstances of the present case, it is evident that the Client has remained vague and non-committal regarding the manner in which she intends to settle the outstanding interest and costs. Her reference to “*reasonable installments*” is imprecise and unsupported by any concrete proposal as to the amount she is willing or able to

pay per month. Apart from stating that she is a senior citizen, she has not disclosed her financial position nor provided any evidence to demonstrate inability to meet her obligations. Indeed, her own admission that she obtained a loan facility to clear the principal sum suggests that she has access to financial resources, as it would be expected that she continues to service that facility.

15. It is also significant that the decree in question was issued six years ago, a considerable period during which the Advocate has been denied the fruits of a judgment lawfully obtained. Such prolonged delay militates against the grant of further indulgence. On the other hand, it is acknowledged that the Client has since paid the principal sum of Kshs. 538,165, leaving an outstanding balance of Kshs. 327,149.82, which represents accrued interest and costs. This partial compliance is a factor that weighs in her favor, though it does not absolve her of the responsibility to settle the remaining amount in full.

16. Taking everything into account, and bearing in mind the need to strike a fair balance between the

competing interests of the parties, I am persuaded that the appropriate course is to grant the Client a limited indulgence. While the Advocate is entitled to enjoy the fruits of the judgment without undue delay, the Client has demonstrated partial compliance by settling the principal sum. In the interests of justice, I therefore consider it reasonable that the Client be directed to pay the outstanding balance of the decretal sum within a period of two months.

Disposition

17. I therefore allow the application dated 9th December 2024 in the following terms:

i. The Client be and is hereby ordered to pay the balance of the decretal sum arising from the Decree of 9th May 2019 by way of 2 equal monthly instalments with effect from 1st February 2026.

ii. Each instalment shall be paid on or before the 6th day of the month. In default of payment of any one instalment which is due and payable, the full amount outstanding to

become due and payable and the Advocate will be at liberty to execute the decree.

iii. Each party shall bear their own costs.

Application dated 24th July 2025:

18. By this second application, the Client seeks leave of the Court to act in person and further prays that this matter be consolidated with **Miscellaneous Cause No. 339 of 2027**. In addition, she prays that the Advocate be directed to remove the caveat registered against her property and to release the original title deed to her, on the basis that the legal fees claimed have already been fully settled. The application is anchored on her affidavit sworn on 24th July 2025.

19. The Advocate, in response to the Client's application, filed a Notice of Preliminary Objection dated 12th August 2025. The essence of the objection is that the Client had previously lodged the application dated 9th December 2024 seeking substantially similar orders, which remains pending before the court and is already scheduled for hearing pursuant to directions issued. The

Advocate contends that the present application is duplicative, amounts to a gross abuse of the court process, and should therefore be struck out.

Analysis and Determination

20. Having already rendered a determination on the application dated 9th December 2024, it is clear that the only remaining issues for consideration in the present application are twofold: first, whether the Client should be granted leave to act in person, and second, whether this matter ought to be consolidated with Miscellaneous Cause No. 339 of 2027. These questions were not canvassed in the earlier application and therefore stand as distinct matters requiring adjudication.

21. In light of this, the Preliminary Objection raised by the Advocate cannot be sustained. The objection was premised on the assertion that the present application merely replicates the earlier one; however, since the issues now before the court are separate and were not addressed in the application of 9th December 2024, the objection fails. Accordingly, the Notice of Preliminary Objection dated 12th August 2025 is dismissed with no orders

as to costs and the said application shall be heard on merit only in respect of these 2 issues.

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 30TH DAY OF JANUARY 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Mr Kangethe for the advocate

Ms Wangechi the client in person

Court Assistant: Lillian