



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
MISC APPLN NO. E034 OF 2023

BETWEEN

**MBOLEKO LIMITED
APPLICANT/RESPONDENT**

VERSUS

**WAMASAA TRAVELLERS LIMITED
RESPONDENT**

AND

**DANIEL MUEMA MBOLONZI 1ST
OBJECTOR/APPLICANT**

**GEORGE MUSAU KIOKO 2ND
OBJECTOR/APPLICANT**

**STEPHEN MUKONZA MBOLONZI ... 3RD
OBJECTOR/APPLICANT**

RULING

Introduction and Background

1. By a Notice of Motion application dated 7th October 2025 the Applicants seek leave of the Court to liquidate the decretal sum by making an initial payment of Kshs. 100,000/=, followed thereafter by monthly instalments of Kshs. 50,000/= from the

date of the order until full settlement of the decretal sum, without interest. In addition, they pray that execution of the decree be stayed for as long as they continue to make the proposed monthly instalments until the decretal sum is paid in full.

- 2.** The Applicants aver that judgment was entered against the Respondent/Applicant in the sum of Kshs. 3,497,184.55/=, pursuant to which warrants of attachment have been issued against their motor vehicles, namely KCA 173L, KCF 417B, KBM 630C, KBM 339M, and KCD 978U. They further state that these vehicles have already been proclaimed and, following the ruling delivered on 1st October 2025 dismissing their objections, the Claimant/Respondent, through Crater View Auctioneers, is now set to proceed with attachment unless the decretal sum is settled in full, an obligation the Applicants contend is beyond their immediate financial capacity.

- 3.** They explain that they are not in formal employment and rely solely on daily income from the matatu business, making it impossible to

liquidate the decretal sum at once. They express apprehension that unless the Court intervenes, execution will proceed to their detriment, causing irreparable loss and damage and impairing their ability to meet obligations to creditors.

- 4.** The Applicants affirm their readiness to comply with any conditions the Court may impose and argue that the Claimant/Respondent will suffer no prejudice if they are allowed to settle the decretal sum by monthly instalments of Kshs. 50,000/= until payment in full. Finally, they urge that it is in the interest of justice that the application be allowed.
- 5.** The application is opposed by way of Grounds of Opposition dated 24th October 2025. The Respondent contends that the application is overtaken by events, noting that the Judgment Debtor had the opportunity to raise the alleged financial constraints during the examination of directors, and the present application is therefore an afterthought intended to frustrate or delay extraction of the decree. The Respondent further argues that no evidence has been produced,

whether by books of accounts or financial statements, to demonstrate the existence of loans or financial accommodations as pleaded in the supporting affidavit.

6. The Respondent further asserts that the motor vehicles listed in the affidavit, which had been proclaimed and attached under the **Auctioneers Act No. 5 of 1996**, have already been unlawfully sold to third parties, and that such sale constitutes an offence punishable by law. From this conduct, the Respondent maintains that they are undeserving of the Court's intervention.
7. It is also argued that the proposal to settle the decretal sum without interest would occasion prejudice and injustice to the Decree Holder, given that recovery has already been delayed for over five years since the breach of contract. The suggested instalment plan of Kshs. 50,000/= per month is described as irrational and unconscionable, as it would take nearly six years to liquidate the debt.

8. The Respondent maintains that the Applicants have failed to establish irreparable harm or loss to third parties, despite being aware of the final award for two years and having had ample time to organize their affairs. They have also not demonstrated any financial arrangements for raising funds towards settlement of the decretal sum.
9. Finally, the Respondent accuses the Judgment Debtor of deceiving the Court by relying on expired warrants of attachment to secure stay orders, and therefore submits that the Applicants approach the Court without clean hands.

Analysis and Determination

10. Pursuant to ***Order 21 Rule 12(1) and (2) of the Civil Procedure Rules***, this Honourable Court is clothed with discretionary authority to direct that a decretal sum be either postponed or liquidated by way of instalments. However, such discretion is not automatic; it is exercised only where the Applicant has satisfactorily demonstrated sufficient cause to

warrant the indulgence of the Court. The grant of such relief is therefore not a matter of entitlement, but rather a privilege that must be justified through cogent and credible evidence.

- 11.** This principle finds firm footing in the decision of **A. Rajabali Alidina V Remtulla Alidina & Another, (1961) EA 565**, where Law J. underscored the guiding considerations in the exercise of judicial discretion under this provision. The Court must consider, inter alia, the circumstances in which the debt was contracted, the conduct of the debtor both before and after judgment, the bona fides of the application, and the ability of the debtor to meet the proposed instalments without unduly prejudicing the decree holder.
- 12.** Similarly, 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.

- 13.** Turning to the present case, the existence of a valid Decree issued on 31st October 2024 is not in issue. What falls for consideration is whether the Applicants have made a case to be allowed to satisfy that Decree in installments.
- 14.** The Applicants contend that they are not engaged in formal employment and that their livelihood is derived exclusively from daily earnings in the matatu business. On this basis, they argue that it is impracticable for them to liquidate the decretal sum in a single payment. This averment is devoid of evidentiary support.
- 15.** The Applicants appear to proceed on the assumption that informal employment, by its very

nature, translates into financial incapacity. Such an assumption is untenable. The Court cannot accept mere assertions without disclosure of concrete particulars regarding their income streams, expenditure obligations, and overall financial position.

16. Moreover, the Applicants themselves acknowledge that they are currently servicing loan facilities. This admission undermines their claim of incapacity. The ability to obtain and repay credit facilities demonstrates a measure of financial capacity. Yet, the Applicants have failed to disclose the quantum of these loans, the repayment schedules, or the manner in which such obligations impact their ability to satisfy the decretal sum. In the absence of such material particulars, the Court is left with bare assertions that cannot justify the indulgence sought.

17. The Respondent asserts, and the Applicants have not controverted, that the Decree arising from the arbitral award has remained unsatisfied for a considerable period of time. The continued failure to honour the Decree not only undermines the

authority of the arbitral process but also denies the successful party the benefit of its judgment. It is a well-established principle that a litigant who has obtained a lawful judgment is entitled to reap its fruits without undue delay. To withhold or postpone such enjoyment is manifestly prejudicial to the Respondent and contrary to the interests of justice.

18. It has further not been controverted by the Applicants that the motor vehicles previously proclaimed in execution have since been disposed of to third parties. Should this assertion be true, it reflects a deliberate disregard for the authority of the Court and the obligations imposed by the Decree. In these circumstances, they cannot properly invoke the equitable jurisdiction of this Court, for equity does not extend its protection to litigants who approach it without clean hands or who have failed to act in good faith.

19. I am equally mindful that granting the Applicants' request to liquidate the decretal sum by way of monthly instalments of Kshs. 50,000/= would inevitably result in a repayment period of approximately 70 months, translating to nearly 6 years before the decretal amount of Kshs.

3,497,184.55/= is fully satisfied. Such an arrangement would unduly delay the Respondent's enjoyment of the fruits of its judgment and impose upon it inconvenience that the Court cannot ignore.

20. The prejudice to the Respondent becomes even more pronounced when one considers that the Applicants have coupled their proposal with a plea for waiver of interest on the decretal sum until payment in full. To accede to such terms would not only deprive the Respondent of compensation for the time value of money but would also amount to shielding the Applicants from the natural consequences of their default.

21. Taken together, these circumstances render the Applicants' proposal inequitable and incapable of attracting the discretionary favour of this Court. It is evident that the decretal amount continues to attract interest, thereby escalating the Respondent's entitlement with each passing day.

22. Having carefully considered the circumstances of this case, I remain mindful of the need to balance

two competing interests, the Respondent's right to prompt satisfaction of the decree, and the Applicants' plea for a structured opportunity to discharge their liability.

23. The Court cannot ignore that the Respondent, as the successful party, is entitled to enjoy the fruits of its judgment without undue delay, yet fairness also requires that the Applicants be afforded a reasonable chance to meet their obligations. In striking this balance, I am prepared to extend accommodation to the Applicants, though only to a limited extent.

Disposition

24. Accordingly, I allow the application dated 7th October 2025 in the following terms:

- i. The Applicants are hereby ordered to pay to the Respondent, the decretal sum arising from the Decree of 31st October 2024 by way of five (5) equal monthly equal instalments commencing 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 Respondent will be at liberty to execute the decree.***
- iii. Each party shall bear their own costs.***

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

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Mr Kihanga for the decree holder
Mr Mulandi for the judgment debtor
Court Assistant: Lillian