

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**

**MISCELLANEOUS CAUSE NO. E015 OF 2022**

**IN THE MATTER OF THE ADVOCATES ACT**

**-AND-**

**IN THE MATTER OF COSTS BETWEEN ADVOCATE AND**  
**CLIENT**

**-AND-**

**IN THE MATTER OF SCHEDULES 5 AND 6 OF THE**  
**ADVOCATES (REMUNERATION) (AMENDMENT) ORDER 2014**

**-BETWEEN-**

**MOHAMED  
ADVOCATE/DH**

**&**

**SAMNAKAY.....**

**-VERSUS-**

**AMIN HAJI ..... 1<sup>ST</sup>**  
**JD/APPLICANT**

**SHAIROSE HAJI ..... 2<sup>ND</sup>**  
**JD/APPLICANT**

**RULING**

1. This ruling relates to the Notice of Motion Application dated 14<sup>th</sup> October 2025 filed by the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors/Applicants under section 3 and 3A of the Civil procedure Act, Order 10 Rule 11, Order 7 rule 50 and Order 51 rule 1 of the Civil Procedure Rules. It seeks the following primary orders:-

***a) An order that the Judgement Debtors/applicants be allowed to pay the decretal sum of Kshs. 173,465.69 by way of reasonable monthly instalments till payment in full.***

***b) Costs of the application be provided for.***

2. The Application is premised on the Supporting Affidavit of Shairose Haji, the 2nd Applicant, sworn on 14th October 2025 and it is opposed by the respondent/Decree Holder through a Replying Affidavit sworn on 24<sup>th</sup> October 2025 by Zul Mohamed. The application was disposed of by written submissions.

### **Factual and Procedural Context**

3. The history of this matter is largely uncontested. A certificate of Costs was issued on 15<sup>th</sup> July 2022 in favour of the Respondent for a sum of Kshs. 95,493 and on 21<sup>st</sup> September, 2022 the court entered judgment in terms of the taxed costs plus further costs and interest. The applicant did not settle this sum and it increased to Kshs 173465.69

forcing the respondent to commence execution by serving a Notice to Show Cause.

4. On 9<sup>th</sup> September 2025, the Applicants paid Kshs. 10,000/- and proposed a settlement plan of Kshs. 10,000/- per month. They also filed the instant motion seeking stay of execution and leave to pay the decretal sum by monthly instalments.

5. On 3<sup>rd</sup> November 2025, the court issued orders, inter alia, directing the applicants to file an Affidavit of Means but the orders were never complied with. However, in the supporting affidavit by the 2<sup>nd</sup> applicant, the applicants contend that they are elderly retirees, who depend on their daughter for financial support. As such they contended that they are incapable of liquidating the decretal sum in one lump sum without suffering great hardship and risk of civil imprisonment.

6. The Respondent, on the other hand maintained that the applicants have the means to pay; that they are not being

truthful about their financial status; that they are flight risks, and they have demonstrated contempt for court orders in a related matter, that is, ELC Misc. Cause No. 063 of 2022. The Respondent produced copy of Business Card showing that the 1<sup>st</sup> applicant is the Managing Director of a major distribution and export company called DTR International DWC LCC. He further produced copy of LinkedIn profile showing the 2<sup>nd</sup> applicant is the General Manager of the same company. Consequently, the respondent urged the court to dismiss the application and allow execution to proceed, or direct the applicants to settle the decretal sum by monthly instalments of Kshs. 50,000 until payment in full.

7. Having considered the motion, affidavits and submissions the main issue for determination is whether the applicants have demonstrated sufficient cause for this court to order for payment of the decretal sum by instalments.

### **Payment of decreed sum by Instalments**

8. The power of the court to order payment by instalments is discretionary and it is donated by Order 21 Rule 12 of the Civil Procedure Rules as follows:-

***“(2) after passing of any 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 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.”***

9. In the case of **African Banking Corporation Limited v Florence Wangari Wangai [2012] eKLR**, the court held that:-

***“My view is, an applicant who wishes a court to exercise its discretion and order payment of decretal sum by way of instalments must be very candid with the court. Such an applicant must***

***present to the court sufficient material to show that he/she is a person of no means, that whatever income she/he has is lawfully committed elsewhere. He/she must disclose to the court all his/her means and explain to the court why the proposed instalments are the best option available. Accordingly, the burden is on the applicant to prove/show that he/she deserves the order sought.”***

10. The above provision and the cited case are clear that the onus is on the Applicant to show “sufficient reason” for warranting postponement or staggered payment of the decree by instalments. The reason should be such that the court would grant the request with or without the consent of the decree-holder. There is no straight jacket that fits all cases but each should be determined on its own special circumstances. All that is required is that the reason must be genuine and believable including:-
- (a) The magnitude of the debt.
  - (b) The period of the delay in payment.

- (c) The conduct of the debtor and any acts of good faith.
- (d) The hardship that may result from enforcing the decree.
- (e) Prejudice that may be suffered by the decree-holder.

11. In the instant case, the Applicant contended that they are retirees who depend on their daughter for household, daily assistance, and basic necessities. The respondent denied the said allegation and produced evidence to show that the applicants are Managing Director and General Manager, respectively of DTR International DWCC LCC. I have already observed that the onus is on the Applicant to demonstrate sufficient reason for the indulgence sought by making a candid explanation and not generalised statements. The best way to do so was by filing an affidavit of means as directed by the court on 3<sup>rd</sup> November, 2025 but the respondents squandered that opportunity.

12. As things stand now, the Applicants have not tabled before this court any evidence to prove their inability to pay the

decreed sum. They have also not adduced any evidence to rebut the evidence by the respondent that one of them is the Managing Director and the other is the General Manager of DTR International DWC LCC. Except the general statement that they are retirees, they have not filed any evidence of their financial status since the 15<sup>th</sup> July 2022 when the material Certificate of Costs was issued against them to the date of making the application.

13. Order 21 Rule 12(2) sets the condition for exercising discretion to order payment of decreed sum by instalment, that is, the applicant must show sufficient cause and not generalised allegation. Public policy requires that judicial pronouncements are not mere suggestions, but are binding edicts which must be complied with. Ultimately, the court's discretion must be exercised judiciously to meet the ends of justice, and not to shield defaulters for no sufficient cause.

14. It is abundantly clear that there is no evidence to prove that they are a man and a woman of straw. They had custody of

information/evidence of their financial status from the time the judgment debt accrued, but they deliberately withheld it from the court. As such this court is entitled to infer that the said information was withheld (and especially the failure to file an affidavit of means) because it would be against their case. In the circumstances, I find that the applicants have not showed sufficient cause to warrant the indulgence sought.

15. The Applicants further alleged that they demonstrated good faith by making an initial payment of Kshs.10,000/- vide a cheque dated 9<sup>th</sup> September 2025. However, the said payment was too little too late. As observed above, court orders are not suggestions and therefore payment of Kshs.10,000 three years after judgment and after commencement of execution, in my view does not *per se* reflect good faith.

16. I wish to emphasized that a court's discretion to order payment by installments must balance creditor protection

with genuine debtor incapacity. This involves a balancing act between draconian enforcement and protection of vulnerable parties. In doing so the applicant must provide sufficient evidence to support his/her vulnerability to be weighed against the interest of the decree holder, and the wide public policy in the administration of justice. In doing so, Order 21 Rule 12(2) of the Civil Procedure Rules requires that the consent of the decree ought to be considered.

17. In this case, the decree-holder has agreed to a monthly instalments of Kshs. 50,000 and above. Considering the decree-holder's consent, matters discussed above and more specifically the period of delay in payment since the decree was passed, and also the time lapse from September 2025 when the applicants last paid Kshs. 10,000 to the decree-holder, I make the following orders:-

- a) The Applicants are granted leave to settle the outstanding balance of the decreed sum Kshs. 163,465.69 (being Kshs. 173,465.69 less the initial

payment of Kshs. 10,000/-) plus interest by the following instalments:-

- (i) First instalment of Kshs 50,000 shall be paid on or before 15<sup>th</sup> February 2026.
- (ii) The balance shall be paid by way of monthly installments of Kshs. 20,000/- starting on 15<sup>th</sup> March 2026 and on or before the 15<sup>th</sup> day of each succeeding month until payment in full.

b) If the Applicant/Judgment-debtor defaults in any of the above instalments, execution shall proceed for the entire balance of the decreed sum.

c) The Respondent/deGREEE-holder is awarded Kshs. 3,000 as costs of the instant motion.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**ONESMUS MAKAU**

**JUDGE**

**Appearance:**

Zul for the Claimant/Applicant

Mwanzile for the Respondent

ORIGINAL