

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
MISCELANEOUS CIVIL APPLICATION NO. E320 OF 2023

1. F.KINYUA KAMUNDI
2. D.T. MUYAA (trading as Kinyua Muyaa
& Company Advocates).....ADVOCATES/RESPONDENTS
-VERSUS-
PMM ESTATES(2001) LIMITED.....APPLICANT/CIENT

RULING

1. This is a ruling on the applicant/client's application dated 6 July 2025 in which the client seeks stay of execution of the taxed costs on account of fees due to the advocates/respondents. The client also seeks to settle the taxed costs by way of monthly instalments of Kshs. 1,000,000/= each till payment in full. The total amount due is Kshs. 11,000,000/=.
2. The motion is expressed to be filed under section 1A, 1B and 3A of the Civil Procedure Act, cap. 21; and, Order 21 rule 12, order 22 rule 22 and order 51 rule of the Civil Procedure Rules.
3. Dr. Judith Irungu Mhina has sworn an affidavit in support of the application and stated that she is the director of the client; she admits that on 16 June 2025, the advocate/client bill of costs was taxed at Kshs.11,000,000/=. The advocates had previously represented the client in the Court of Appeal Case No. 124 of 2022 which had escalated from this Honourable Court's decision in Admiralty Claim No. M001 of 2022.
4. The amount of Kshs. 11,000,000/= was agreed upon by the client and the advocates as due and owing to the latter. However, the client is unable to

pay the entire amount in one instalment and seeks, instead, to settle the amount by equal monthly instalments of Kshs.1,000,000/= till payment in full.

5. The advocates opposed the application by way of grounds of objection dated 29 July 2025 and a replying affidavit captioned as “further affidavit”. It has been sworn by Mr. Kinyua Kamundi.
6. According to the advocates, the application is meant to delay payment of their fees which was agreed upon by consent. The consent was reached after the advocates agreed to forego a substantial sum of the total amount due to them in consideration for the what they have described as “*expedited settlement*”. At the time of entering the consent, no request was made for settlement of the fees by way of instalments.
7. Further, the client has not demonstrated inability to pay the fees since it has failed to avail any bank statements, audited accounts, schedule of its assets and liabilities or other record in proof of the fact of its alleged inability to pay the fees in one instalment. In any case, the client’s motor vessel, “Mirembe Judith” has been in operation, and, therefore, in business since its release by the Court of Appeal where the advocates successfully represented the client.
8. Order 21 rule 12(1) and (2) of the Civil Procedure Rules which the client has invoked in its application reads as follows:

12. Decree may direct payment by instalments [Order 21, rule 12]

(1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) 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.

9. Of worth noting in this rule is that the rule envisages the existence of a money decree before consideration of whether its payment should be postponed or settled by way of instalments. According to sub-rule (1), the court, may on its own motion and in exercise of its discretion, direct the manner of settlement of the decree; whether it should be settled on a future date or by way of instalments, with or without interest. All this

information would be contained in the decree itself because, according to sub-rule (1), the court can only move *suo motu* and exercise its discretion at the time of making the decree.

10. According to sub-rule (2), the court may postpone the payment of the decree or order that it be paid by way of instalments on the application of the judgment-debtor. Thus, under this sub-rule, the court must be moved and it is only after an application by the judgment-debtor that it may order postponement of payment of the decree or direct payment by way of instalments. Again, in this sub-rule, the court may only exercise its discretion if the decree holder consents to the postponement of payment of the decree or payment by way of instalments although the consent may be dispensed with if, in the court's opinion, there is a sufficient cause to settle the decree other than through execution process or other means available to the decree-holder.

11. Turning back to the applicant's application, the pertinent question is where the application falls in this legal scheme. Certainly, it does not fall under order 21 rule 12(1) because no application is necessary under this sub-rule. As earlier noted, postponement of the payment of the decree or payment of the decree by way of instalments constitute a decision that would be made by the court, on its own motion, and included in the decree, at the time of making the decree.

12. The application does not also fit in order 21 rule 12(2) because this sub-rule is clear that it is only “*after passing of any such judgment or decree*” that an application for postponement of payment or payment by way of instalments may be made. In the applicant’s case, no judgment or decree has been passed and, perhaps cautious of this fact, and also conscious that the respondent’s application is pending determination in a separate cause, the applicant has prayed, *inter alia*, that:

“c) That upon the taxed costs being adopted as a judgement of the Court, this Honourable Court be pleased to grant leave to the Applicant/Client to liquidate the taxed costs of Kshs11,000,000/- by making equal monthly instalments of Kshs.1,000,000/- payable by the 5th of each month.” (Emphasis added).

13. Now, if the law applicable to applications for payment by way of instalments says that such applications can only be made after the passing of the judgment or decree, an application that is made prior to the occurrence of what, for all intents and purposes, is a condition precedent to making such an application, is a premature application. In more technical terms, it is an application that is misconceived and, to some degree, an abuse of the process of this Honourable Court. The applicant’s application is tainted on these grounds; it is hereby struck out with costs. It is so ordered.

Signed, dated and circulated on the CTS on 26 February 2026

Ngaah Jairus

JUDGE