

(e) Interest on the amount in (d) at court rates from the date of filing the suit until payment in full.

(f) The Claimant shall also have the costs of the suit.

2. Following the said judgment, the Respondent/Applicant filed the instant Notice of Motion dated 20th November 2025, seeking the following orders:

1) Spent.

2) Spent.

3) THAT a permanent order of injunction do issue restraining and/or prohibiting the Claimant and the 2nd Respondent Moran Auctioneers ("the auctioneers") whether by themselves, their servants, agents, employees, workmen or otherwise howsoever, from carrying away, advertising for sale, selling, transferring, alienation, attaching, removing or in any way dealing with the Applicant's property and/or goods located at the Applicant's premises or in the care of the Applicant and/or listed in the auctioneer's Attachment Notice dated 19th November 2025.

4) THAT the Applicant herein be allowed to defray the decretal sum in monthly instalments of Kshs. 64,445/= from 1st December 2025 and

thereafter on the last date of each subsequent month until payment in full.

5) THAT in the interest of justice, the Court do grant any further relief it deems fit.

6) THAT costs of this application be provided for.

3. The Notice of Motion is premised on the grounds set out on its face and on the Supporting Affidavit sworn on 20th November 2025 by **Raymond Mwangi**, who describes himself as the Head of Shared Services at the Applicant institution.
4. The grounds in support of the Motion are that on 19th November 2025, the 2nd Respondent, Moran Auctioneers, acting on the instructions of the Claimant, proceeded to the Applicant's premises and issued a proclamation/attachment notice over the Applicant's motor vehicles and tools of trade.
5. Mr. Mwangi deposes that the Applicant is a learning institution facing financial challenges, exacerbated by a surge in cases filed against it by debtors and others following the COVID-19 pandemic, and is consequently experiencing economic difficulties.

6. He further states that the Applicant has previously entered into arrangements with creditors to settle debts in instalments to avoid financial overburden that could result in the closure of the institution.
7. As a demonstration of good faith, on 7th October 2025 the Applicant attempted to make a payment towards the decretal sum by issuing a cheque for **Kshs. 64,445/-**, which was, however, rejected and returned.
8. Mr. Mwangi avers that the Applicant seeks leave of this Honourable Court to pay the decretal sum in monthly instalments of Kshs. 64,445/-, noting that the Applicant has similar repayment arrangements with third parties and is therefore unable to pay the decretal amount in a lump sum.
9. The Application is opposed through the Claimant's undated Replying Affidavit in which she deposes that the Application is a post-judgment delaying tactic, lacking legal foundation, evidentiary support, and procedural merit. She contends that the Applicant seeks to obstruct lawful execution and evade compliance with this Court's decree, despite having no pending appeal, stay, or review on record.

10. She avers that the decree crystallised the Respondent's financial obligations under the judgment and that the decretal amount and costs remain wholly unpaid.
11. She further avers that Moran Auctioneers lawfully proclaimed the Respondent's assets on 19th November 2025 pursuant to a valid and unchallenged decree, and that her Advocates have advised her that the execution complied with all procedural safeguards under the Employment Act, Auctioneers Act, and the Civil Procedure Rules.
12. The Claimant contends that the Respondent's claims of "financial challenges," "economic pressure," and "risk of closure" are generalized, unsupported, and not corroborated by a single piece of documentary evidence.
13. She asserts that the Respondent has not produced audited financial statements, cash-flow schedules, bank statements, audited loss reports, board minutes declaring financial distress, auditor's going-concern warnings, regulatory insolvency notices, or any documentation confirming an existential financial crisis.

14. She states, based on advice from her Advocates, that without such evidence, the Court cannot rely on broad statements of hardship to override a decree that has been valid since July 2025.

15. Regarding the litigation alleged by the Respondent, the Claimant contends that the existence of such cases does not constitute evidence of insolvency or financial incapacity. She further avers that the Respondent has not demonstrated the monetary value of each case, which suits (if any) have resulted in judgments, whether any decrees have been satisfied, what payment arrangements exist, whether any matters are ongoing, or how these suits impact its liquidity.

16. The Claimant further avers that the Respondent continues to operate, admitting learners, charging fees, employing staff, conducting training, and maintaining infrastructure, which contradicts its narrative of imminent financial collapse. She contends that the Respondent is using unrelated litigation as a pretext to delay satisfaction of a decree arising from its own obligations.

17. She denies receiving the cheque for Kshs. 64,445/- allegedly issued on 7th October 2025, and avers that no payment has ever been credited toward the

decree. She maintains that the cheque does not constitute evidence of inability to pay the decretal sum.

18.The Claimant adds that the cheque was returned because it was not accompanied by a settlement agreement, no formal proposal had been communicated, no security was offered, and there was no legal basis for unilateral part-payment without her consent.

19.She is advised by her Advocates on record that a repayment plan of Kshs. 64,445/- per month would extend repayment over 24 months, excluding interest, which is commercially unreasonable, prejudicial, and inconsistent with the purpose of the decree.

20.She further avers that the Applicant has not made a single payment since the judgment and only sought indulgence after execution proceedings commenced.

21.She asserts that the Respondent has not demonstrated that execution will close its operations, affect learners, result in seizure of essential assets, or compromise its business continuity.

22. In her view, the proclamation lists non-essential assets only, and the Applicant has not challenged the contents of the proclamation through inventory or valuation.

Submissions

23. The Application was canvassed by way of written submissions, which the Court has duly considered.

Analysis and Determination

24. Having considered the Notice of Motion, the Claimant's Replying Affidavit, and the parties' submissions, the sole issue for determination is whether this Court should allow the Application, thereby permitting the Applicant to pay the decretal amount in instalments.

25. The relevant law in determining this issue is **Order 21 Rule 12(2) of the Civil Procedure Rules**, which provides as follows:

“(2) After passing of any such 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 into 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.” Underlined for emphasis

26. Fundamentally, the power to order payment of a decretal amount by instalments lies within the Court’s discretion. However, the Applicant bears the onus of demonstrating sufficient cause to justify the exercise of such discretion.

27. In *Keshvaji Jethabhai & Bros Limited v Saleh Abdulla [1959] EA 260*, the Court outlined the principles that should guide the exercise of discretion in applications of this nature, as follows:

- a. whilst creditors’ rights must be considered, each case must be considered on its own merits and discretion exercised accordingly.*
- b. the mere inability of a debtor to pay in full at once is not a sufficient reason for exercise of the discretion.*
- c. the debtor should be required to show his bona fides by arranging prompt payment of a fair proportion.*
- d. hardship of the debtor might be a factor, but it is a question in each case whether some indulgence can fairly be given to the debtor without prejudicing the creditor.*

28. Similarly, in the case of *Jabali Alidina v Lentura Alidina [1961] EA 565*, it was held that: -

“All commentators on the Civil Procedure Code agree that the court’s discretion to order payment of the decretal amount in installments is one which must be exercised in a judicial and not an arbitrary manner. The onus is on the Applicant to show that he is entitled to indulgence under this rule. It is for the Applicant to show “sufficient reason” for indulgence being shown to him...”

29. Turning to the present case, it is notable that, despite citing economic challenges, the Applicant has failed to provide any evidence demonstrating an inability to settle the decretal sum in a lump sum. In other words, the Applicant has not substantiated its claimed financial incapacity, relying solely on a general assertion of economic difficulties. For instance, the Applicant has not produced financial statements or audited accounts to reflect its financial position. Consequently, the Applicant’s financial standing and income-generating capacity remain unknown.

30. It is also notable that, despite referring to cases filed against it, the Applicant has not specified the decretal sum payable in each of those cases, nor the proposed monthly instalments for each matter. Equally, the Applicant has neither demonstrated nor indicated the amounts it has agreed to pay other creditors to settle its outstanding debts.

31. This Court has considered the circumstances under which the decretal amount arose. The record shows that it relates to the Claimant's withheld salaries from August to December 2020 and from July 2022 to June 2023, as well as unpaid leave days. As of now, these sums have been outstanding for approximately three to six years. Fundamentally, these claims arise as of right under the Employment Act. Accordingly, it is fair and just that such payments should not remain unsettled for an unreasonably long period.

32. In light of the foregoing, the Court finds it inequitable to permit the Applicant to pay the balance of the decretal amount in monthly instalments of Kshs. 64,445/- particularly given that as of now, there is no evidence that the Applicant has made any payment towards settling the decretal amount.

33. The foregoing notwithstanding, the Motion will only succeed to the extent that the Court notes the decretal sum originated in August 2020, during the outbreak of the COVID-19 global pandemic, which caused significant disruptions to business operations. The Court also takes judicial notice that the pandemic and the government-imposed measures resulted in decreased commercial activity. For this reason, and in the interest of balancing the parties' respective interests, the Court will grant the Applicant some relief and allow it to pay the decretal sum as follows:

- a) **The Respondent/Applicant shall pay the decretal amount in six (6) equal consecutive instalments, with the first instalment payable on or before 5th March 2026. Subsequent instalments shall be paid on or before the 5th day of each month until the full amount is settled.**
- b) **In the event of default in payment of any instalment, execution shall issue.**
- c) **There will be no orders as to costs.**

DATED, SIGNED and DELIVERED at NYERI this 17th day of February 2026.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Odari for the Claimant/Respondent

Ms. Watiri for the Respondent/Applicant

Ndati Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

ORIGINAL