



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau v Njoroge (Civil Appeal 307 of 2023)  
[2026] KEHC 2350 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2350 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL 307 OF 2023**

**TW OUYA, J**

**FEBRUARY 26, 2026**

**BETWEEN**

**FRANCIS KAMAU ..... APPELLANT**

**AND**

**JOEL KIMOTHO NJOROGE ..... RESPONDENT**

**JUDGMENT**

1. This appeal emanates from the ruling of the lower court, in Thika SCCC No. E640 of 2022 delivered on 14<sup>th</sup> November 2022 where the Adjudicator dismissed the appellant's application seeking leave to pay the decretal sum in instalments of alternate figures of Kshs. 30,000 and Kshs. 15,000 each month until payment in full, on grounds that the appellant had not adduced any evidence to prove his inability to settle the decretal sum in lump sum.
2. The background to this appeal, is that the respondent instituted a commercial case at the Thika Small Claims Court vide a Statement of Claim dated 27<sup>th</sup> June, 2022 and filed on 5<sup>th</sup> July, 2022, seeking a refund of Kshs. 200,000, allegedly advanced to the appellant as a loan.
3. The appellant denied the claim vide Response to Statement of Statement dated 18th July 2022. Upon hearing the matter, the Adjudicator entered judgement in favour of the Defendant/Respondent. The appellant then filed an application before the trial court dated 26<sup>th</sup> October, 2022, seeking to be allowed to pay the decretal sum in instalments of alternate figures of Kshs. 30,000 and Kshs. 15,000 each month until payment in full.
4. After considering the application, the learned trial magistrate/Adjudicator delivered the impugned ruling. The appellant was aggrieved by the said ruling hence the instant appeal.
5. In his Memorandum of Appeal dated the 22<sup>nd</sup> of November, 2022, the appellant advanced three (3) grounds of appeal faulting the learned trial magistrate for denying his prayer to pay the decretal amount



in instalments, for dismissing his application dated 26<sup>th</sup> October, 2022, and for failing to consider his financial status when making his determination.

6. Based on the above grounds, the appellant urged this court to issue an order allowing him to pay the decretal amount in instalments of alternate figures of Kshs. 30,000 and Kshs. 15,000 each month until payment in full, that this court allows his appeal and set aside the ruling delivered by the trial court on 14<sup>th</sup> November, 2022, and all consequential orders.
7. The appeal was canvassed by way of written submissions. In his submissions dated 13<sup>th</sup> May, 2024, the appellant contended that he had demonstrated sufficient cause to warrant payment of the decretal sum by instalments, having shown that he is unable to settle the amount in a lump sum.
8. The appellant further submitted that, although he is willing to pay the decretal amount, he is presently unable to do so in lump sum due to the fact that the project from which he anticipated returns remains incomplete and is currently generating minimal income. He argued that, in light of prevailing economic conditions, he is unable to pay the decretal amount in lump sum. Consequently, he expressed his willingness to pay the outstanding balance by way of monthly instalments of Kshs. 30,000 and Kshs. 15,000, which he averred he is presently capable of paying, while also meeting his family and daily living expenses.
9. The appellant contended that his application was made in good faith, given that despite his current financial difficulties, he is still determined to clear the balance having already made payments in instalments to the tune of Kshs. 130,000, which amount is 50% of the decretal sum. The appellant also contended that the trial court ought to have allowed him pay the unpaid balance in instalments as prayed, given that both parties were agreeable to payment in instalments.
10. The appellant, in his submissions, contended that the application before the trial court dated 26<sup>th</sup> October, 2022, was dismissed on procedural technicalities rather than on merit, as such, the application dated 15<sup>th</sup> February, 2023, cannot be said to be res judicata.
11. On the other hand, the respondent in his written submissions dated 18<sup>th</sup> June, 2024, submitted that the appellant did not in his application meet the threshold under statute and caselaw to be allowed to pay the decretal sum in instalments, as such his appeal is not merited.
12. The respondent further submitted that the appellant's applications before the small claims court were res judicata, considering that the said applications were seeking the same prayers and had been dealt with by a court of competent jurisdiction.
13. In response to the respondent's written submissions, the appellant filed a further written submission dated 23<sup>rd</sup> July, 2024, wherein he stated that the present appeal is not res judicata, given that it is yet to be heard and determined by this court.
14. The appellant further submitted that his appeal is merited, considering that the learned trial magistrate denied his request to pay the decretal sum in instalments, despite the law providing for the same and without regard for his financial status.
15. I have duly considered the grounds of appeal, the record of the trial court, together with the rival written submissions by the parties, having done so, I find that the main issue for determination is whether the present appeal is merited.
16. Section 36 (1) (a) of the Small Claims Act and rule 27 of the Small Claims Rules give the small claims court the power to allow the debtor to pay a decretal sum in instalments, provided that the debtor adduces evidence showing that he is unable to pay the decretal sum in lumpsum.



17. Section 36 (1) (a) of the Small Claims Court stipulates as follows:  
“The Court may, in relation to any claim within its jurisdiction, make one or more of the following orders: -  
(a) order to pay money either in lump sum or by instalments.
18. Section 27 of the Small Claim rules stipulates that:  
“(1) Where a party in favour of whom a decree has been issued rejects the debtor’s proposal to satisfy the decree by instalments, the Court may, on the oral or written application made by the debtor: -  
(a) hear the parties’ corresponding proposals; and  
(b) on being satisfied on evidence that the debtor is unable to satisfy the decree in lumpsum, make an order allowing the debtor to satisfy the decree  
(i) in accordance with the payment schedule proposed by the debtor;  
(ii) in accordance with the payment schedule proposed by the creditor; or  
(iii) by instalments on such terms as the Court may think just.  
(2) In determining an application made under this rule, the Court shall consider, among other things: -  
(a) the debtor’s net monthly income;  
(b) the aggregate value of the debtor’s assets and liabilities;  
(c) the aggregate value of the debtor’s assets, if any, disposed of by the debtor immediately before or subsequent to the filing of the claim against the debtor with intent to defeat the creditor.”
19. I have perused the appellant’s application before the Small Claims Court dated 26th October, 2022. Although the appellant averred therein that he was experiencing financial constraints and was therefore unable to settle the decretal sum in a lump sum, no evidence was placed before the court to substantiate those assertions.
20. It follows therefore Rule 27 of the Small Claims Court Rules empowers the court to permit payment of a decretal sum by instalments where evidence is tendered demonstrating that the debtor is unable to pay the decretal amount in lump sum. In the absence of such evidence, the court is left with no basis upon which to ascertain the appellant’s alleged financial constraints, and the application may well amount to an attempt to delay or frustrate the respondent’s enjoyment of the fruits of judgment.
21. Given the foregoing, the learned trial magistrate cannot be faulted for denying the appellant’s prayer to pay the decretal sum in instalments, and for dismissing the application dated 26<sup>th</sup> October, 2022 considering that the appellant failed to place before the court any evidence demonstrating his financial status and his inability to satisfy the decretal sum in lumpsum.
22. Based on the foregoing, I find that the present appeal lacks in merit, and the same is dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. T. W. OUYA**

**JUDGE**



For Respondent .....Gathaya Gachuvi

For Appellant.....No Appearance

COURT ASSISTANT.....Brian

