

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT MALINDI**

**MISC. APPLICATION NO. E018 OF 2025**

**MICAH KATUKU NELSON**

**JONATHAN MUEMA MUTUNGA**

**[Suing as the Administrators and Legal Representatives of the Estate of NELSON  
MUTUNGA (deceased) ..... APPLICANTS**

**VERSUS**

**BONAN CONSULT LIMITED .....  
RESPONDENT**

**RULING**

The respondent, Bonan Consult Limited, filed an application dated 17 December 2025, seeking orders for the settlement of the decretal sum of Ksh. 2,956,800 by way of monthly instalments of Ksh. 100,000 until paid in full. The application is supported by Boniface Kyalo Muthwale, who avers that the respondent is unable to settle the total decretal sum and offers to pay reasonable amounts of Ksh. 100,000 per month until payment in full. There are audited financial statements for the years ended 31 December 2023 and 2024, which reflect the cash flow and ability to make payments as proposed.

Muthwale also avers that under Order 21 rule 12 of the Civil Procedure Rules, the court has discretion to permit the payment of the decretal sum in instalments. The application is filed without delay, and I recognise that the decretal sum is payable, save that, due to economic strain, the respondent is unable to settle the same in a lump sum. The payment, if done once, will strain operations and could lead to the collapse of the business.

In reply, the applicant filed the Replying Affidavit of Micah Katuku Nelson, who avers that the decretal sum is Ksh. 3 million, and if the proposed payment plan is adopted at Ksh. 100,000 per month, this will be completed within 3 years. The family of the deceased has suffered loss and damages since the so-called breadwinner's demise while at work, and the dependents have no other means of support. To allow the proposed payment would cause great prejudice.

The deceased suffered injury on 21 September 2021. DOSH made an assessment and directions for payment by 25 August 2022. There is no single payment since. To allow the instalment payments will therefore be prejudicial.

**Determination**

The judgment and orders to pay the applicants herein are not contested. The due amount is over Ksh. 3 million.

In **Keshvaji Jethabhai & Bros Limited v Saleh Abdulla [1959] EA**, the court listed the elements to consider where an applicant offers to pay in the decretal sum in instalments:

*Each case must be considered on its merits; Mere inability to pay in full is not sufficient reason for exercise of discretion; The debtor must show his bonafide by arranging prompt payment of a fair proposition and Hardship to the debtor might be a factor. The question in each case is whether some indulgence can fairly be given to the debtor without prejudicing the creditor.*

In **TK Advocates v Baringo County Government [2018] eKLR** the court held:

*... any decision on whether a court should allow a party to settle a decree by installment is an issue of discretion to be exercised judicially; that the applicant was obligated satisfy the court that in the circumstances of his case such a request is deserved because a successful litigant who has a decree acquires a property right which is to be protected by courts. The court will not order a judgment debtor to pay by installment without the applicant making a case for it...*

The order to pay the work injury award has been alive and known to the respondent since 25 August 2022. There is no single payment since. There is no effort to settle by the proposed Ksh 100,000 per month since filing the national application. There is no goodwill that the respondent is ready to abide by the court directions, even as they move to seek under the discretion for payment in instalments.

In the given circumstances, the standing of the respondent does not support its case at all. Indulging the respondent would only escalate injustice against the applicants, who have since lost their sole breadwinner.

However, in securing justice for each party, the offer to pay in instalments is fair and reasonable, provided the amount is increased to instalments of Ksh. 500,000 each month until payment in full.

**Accordingly, the respondent shall pay the total decreed sum due in monthly instalments of Ksh. 500,000 each month starting with the March 2026 instalment. Each shall be paid on the 30th day of the month. Where there is a default, the applicants shall be at liberty to execute. The respondent shall further meet the costs of this application.**

Delivered in open court at Mombasa on this 19th day of March 2026.

M. MBARŪ

JUDGE