

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
COMMERCIAL AND TAX DIVISION
HCCA E045 OF 2023

JAYANT KUMAR S. PATEL.....
APPELLANT/ RESPONDENT

VERSUS

JOSEPH
KARAGO.....RESPONDENT/
APPLICANT

AND

VIJAY PINDORA.....THIRD
PARTY

RULING

1. Before the court is the respondent/ applicant's notice of motion dated 24.4.2025. It is made under **Orders 9 Rule 9** and **22 Rules 19 and 22 of the Civil Procedure Rules.**

2. The respondent seeks the following orders: -

(1) **Leave for B. T. Atancha & Company Advocates to come on record for him.**

(2) **The decretal amount of Kshs. 3,000,000/- be paid after 60 days have lapsed in 8 equal installments when he will have**

recuperated from medical surgery and resumed business.

3.The application is supported by the affidavit sworn by the respondent on 24.4.2025.

4.The appellant/ respondent opposed the application through a replying affidavit sworn on 21.5.2025 and written submissions dated 14.10.2025.

5.The background is that through the judgment dated 22.3.2024, **Hon. P. J. Otieno J.** allowed the appellant's appeal against the judgment of the Chief Magistrate's Court in **Milimani CMCC No. 4046 of 2019.** The court set aside the judgment against the third party and ordered the respondent to pay the appellant Kshs. 3,000,000/-.

6.The main grounds in support of the application are that: -

(1)The appellant has instituted execution process by making an application for the file to be returned to the Chief Magistrate's Court for purposes of extracting the decree in **Milimani CMCC No. 4046 of 2019.**

(2)The respondent has been ailing, is undergoing treatment and scheduled to undergo medical surgery outside the country hence unable to pay the entire judgment sum in a lumpsum.

7.The appellant's major contestations are: -

(1)The respondent has not satisfied the decree over a year since the judgment was delivered.

(2)The respondent's claim of ill health and foreign medical travel from 2023 are unsubstantiated. The medical records annexed do not specify a recognized medical diagnosis or condition consistent with established medical practice.

(3)The sick sheets lack authentication by a qualified medical practitioner.

(4)The respondent's claim of financial hardship is not proven.

(5)The application has been brought in bad faith.

8.The appellant urged the court to dismiss the application as it is an abuse of the court process, does not meet the legal requirements for stay or

payment by installments is anchored on misleading documents and manufactured claims.

9. The appellant relied on the following cases: -

(1) **James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR**

(2) **Thabu Tuva Konde v Ngomeni Swimmers Ltd [2021] KEHC 7227 (KLR)**

(3) **Machira t/a Machira & Co. Advocates v East African Standard (No 2) [2002] KLR**

(4) **Kenya Shell Limited v Benjamin Karuga Kibiru & Another [1986] KLR 410**

Analysis and Determination

Post-judgment change-of-advocates

10. The applicant seeks leave for **B. T. Atancha & Company Advocates** to come on record for him after the delivery of the judgment.

11. There was no objection to the prayer by the appellant.

Settlement of decretal sum in installments

12. The substantive prayer in the application is that the decretal amount of Kshs. 3,000,000/- be paid

after 60 days have lapsed in 8 equal installments.

13.The respondent highlighted that the appellant has instituted execution process by making an application for the file to be returned to the Chief Magistrate's Court for purposes of extracting the decree in **Milimani CMCC No. 4046 of 2019**.

14.The application is dated 24.4.2025. On the basis of his application, he was to pay in 8 instalments after 60 days. Good faith manifests in many ways which come from the heart. A bona fide applicant would have offered to deposit the instalments that would have been due had the application been granted on the date it was filed. If the applicant was serious, he ought to have paid the debt in full by now as over 8 months have lapsed since the application was made. Yet, no payment has been made.

15.I do note also that the medical evidence provided has not been substantiated.

16.Accordingly, I reject the application. Nonetheless, I order each party to bear own costs of the application.

Conclusion

17. In the upshot, the respondent's application dated 24.4.2025 is successful partially and determined in the following specific terms: -

- a) B. T. Atancha & Company Advocates is allowed to come on record for the applicant.**
- b) The plea to pay the decretal sum in instalments is dismissed.**
- c) Each party to bear own costs of the application.**

**Dated, signed and delivered at Nairobi through
Microsoft Teams online application this 12th
day of March, 2026**

F. Gikonyo M
Judge

In the presence of: -

Ms. Nzuki for Ms Murimi for Appellant
B.T. for respondent
CA- Ivan/Aggrey

