



**Makonjio v Dukapaq Kenya Limited (Cause E309 of 2025)
[2026] KEELRC 928 (KLR) (15 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 928 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E309 OF 2025
HS WASILWA, J
APRIL 15, 2026**

BETWEEN

AUDREY TRIZAH MAKONJIO PETITIONER

AND

DUKAPAQ KENYA LIMITED RESPONDENT

RULING

1. The Respondent/ Applicant filed a Notice of Motion application dated 24th November 2025 seeking orders that: -
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 2. this Honourable court be pleased to stay the execution of the Judgement entered on 20th September, 2023 pending the hearing and final determination of this application interpartes.
 3. this Honourable Court be pleased to stay the execution of the Judgement entered on 20th September, 2023 pending the hearing and final determination of this application.
 4. this Honourable Court be pleased to grant leave to the Defendant/Applicant to liquidate the decretal sum herein by way of monthly instalments of Kshs. 100,000/= until payment in full and as more particularly set out in the supporting Affidavit of the Defendant /Applicant annexed hereto.
 5. as a consequence of order number 4 above, this Honourable Court be pleased to set aside the notice to show cause against the directors of the defendant issued hereto.
 6. the costs of this Application be provided for.



Respondent/Applicant's Case

2. The Respondent/Applicant avers that a consent judgement was entered against the Respondent company on 19th September, 2023 for the principal sum of Kshs. 565,000 all-inclusive, to be paid by instalments as specified in the said consent. So far, it has paid Kshs. 265,000 to the Claimant/Respondent, leaving an outstanding balance of Kshs. 300,000.
3. The Applicant contends that due to severe economic challenges in its sector, it has experienced cash flow difficulties, making it impossible to pay the decretal sum as stipulated.
4. The Applicant avers that its operations have not been vitiated by fraud, misrepresentation, or personal wrongdoing of its directors, and that the financial difficulties are a result of depressed economic activity in the sector.
5. Despite these challenges, the Respondent/Applicant has engaged the Claimant through its advocates on record with a proposal to pay the decretal sum by reasonable instalments and has made part payment, but the Claimant has allegedly refused to accept this proposal, insisting instead on lump sum payment which the Respondent cannot presently meet.
6. The Applicant avers that there is demonstrable goodwill on its part to settle the decretal sum by instalments, as evidenced by the engagement with the claimant and the initial payment made. The Respondent/Applicant asserts that it has not refused to pay and seeks the indulgence of the court to allow settlement of the decretal sum in manageable instalments without causing prejudice to the claimant.
7. The Applicant thus prays that the court allows payment of the decretal sum in instalments of Kshs. 50,000 per month until full settlement. Further, the Applicant seeks interim orders of stay of execution, given that the Claimant has already proclaimed the Respondent's property in execution of the decree.
8. It is the Applicant's case that it is just and equitable for the orders sought to be granted.

Claimant/Respondent's Case

9. In opposition to the application, the Claimant/Respondent filed a replying affidavit dated 16th January 2026.
10. The Claimant avers that the Decree dated 23rd September, 2025 is a result of a Consent entered into by the parties knowingly, with both parties having the benefit of legal representation.
11. It is the Claimant's case that she already compromised her claim against the Respondent by agreeing to the Consent terms in a bid to amicably settle the matter out of Court, thereby demonstrating goodwill. The record shows that the parties initially executed the first consent dated 14th July, 2025 filed in Court on 15th July, 2025, but the Respondent defaulted in payment, necessitating a second consent dated 19th September, 2025, which effectively reduced the first instalment from Kshs. 265,000 to Kshs. 165,000.
12. The Claimant contends that she agreed to the Consent terms fully aware that the amounts were pegged on the corresponding timelines, however, the Respondent is now attempting to re-write the terms of the Consent to its advantage.
13. She avers that the Respondent has not provided any compelling reason to warrant the Court allowing the application. The general statements in the Supporting Affidavit regarding the Respondent's financial status are not supported by any documentary evidence.



14. It is the Claimant's case that the Respondent's application is mischievous and constitutes an abuse of the Court process, intended to further torment her, particularly given that the Consent was adopted in Court on 23rd September, 2025 and default occurred immediately thereafter in October 2025 on grounds of financial constraints.
15. The Claimant avers that the primary dispute arose from non-payment of monthly salary, placing her in a disadvantaged position before filing the suit, and it would be unfair to allow the Respondent to pay in instalments of Kshs. 50,000 as proposed.
16. The Claimant further avers that the Respondent has shown contempt of Court by failing to comply with interim orders and has resorted to closing the company's doors to defeat the Auctioneer's efforts of proclamation, operating instead as a briefcase company.
17. For these reasons, the Claimant prays that the Respondent's application be dismissed; that the Respondent be ordered to pay the balance of the decretal amount of Kshs. 300,000 with interest from the date of the adoption of the Consent in Court; that the Claimant Auctioneer be granted orders to break in and proclaim the Respondent's movable assets; and that the Respondent bears the costs of the Auctioneer and of this application.

Respondent/Applicant's Submissions

18. In its submissions, the Respondent/Applicant reiterated the relevant facts with respect to the application as set out in the supporting Affidavit deposed by its Principal Officer, Neville Keith Lusimba sworn on 24th November, 2025 for this court's determination.
19. The Respondent/Applicant submitted that the guiding principles for grant of an order for payment of a decretal sum by instalments were considered by the Court in *Nahashon Maina & 5 others v Central Park Hotel [2022] eKLR*. The common thread in the decision is that Courts may allow payment of decretal sums by instalments where the offer is made in good faith.
20. It is the Respondent/Applicant's submission that it has demonstrated good faith in this case, having already paid half of the decretal sum.
21. It was submitted that this is a proper case for the Court to exercise its discretion and allow payment of the decretal sum by instalments. The Applicant therefore urges the Court to grant the application and permit the Respondent to settle the outstanding decretal sum by monthly instalments of Kshs. 50,000.

Claimant/Respondent's Submissions

22. The Claimant/Respondent submitted that in *KTK Advocates v Baringo County Government [2018] eKLR* the court held in part as follows:- "It is clear from the above rules that although the court may allow settlement of a decree by installments that is at the discretion of the court and as usual it must be exercised judicially and only in circumstances that justify exercise of the discretion."
23. It is the Claimant's submission that the burden lies on the Respondent, as the Applicant, to demonstrate sufficient grounds to warrant the orders sought. It is contended that the Respondent must place before the Court credible and sufficient reasons to justify payment of the decretal sum by instalments, and not merely rely on general and unsupported assertions.
24. She submitted that in the present case, the Respondent has only made general statements regarding harsh economic conditions and lack of funds, without providing any documentary evidence to substantiate the alleged financial constraints.



25. On costs, the Claimant submitted that the Respondent should bear the costs of the Auctioneer as well as the costs of this application. The Claimant contends that the Respondent failed to engage her after defaulting on the payment agreement and only moved to Court after execution proceedings had commenced.
26. She submitted that the Respondent has demonstrated contempt of Court by failing to comply with existing Court orders and has taken steps to frustrate execution by closing its offices and operating as a briefcase entity to defeat the Auctioneer's proclamation.
27. I have examined the averments and submissions of the parties hearing. From the record, a consent was entered as judgment of this court on 23/9/25.
28. As per the consent, the respondents were expected to pay the decretal sum in instalments listed in the consent and the last instalment was to be effected on or before 31/12/25. It is apparent that the respondents did not pay as agreed and execution started. They now seek a stay and propose to amend the consent so that they can pay the decretal sum in 3 installments. The issue of another consent being re-introduced at this stage is tantamount to asking this court to sit on appeal on the consent of the parties and is therefore an abuse of the court process.
29. I decline the invitation to amend the consent and order the applicants to pay as agreed or execution to proceed. Costs in the claim.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF APRIL, 2026.

HELLEN WASILWA

JUDGE

