

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL COURTS**

**COMMERCIAL & TAX DIVISION**

**MISC APPL E626 OF 2024**

**NJOGU & NGUGI**

**ADVOCATES.....ADVOCA**

**TE**

**VERSUS**

**TERESA NYAMBURA**

**THARA.....CLIEN**

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**RULING**

- 1.This ruling determines whether the client should be allowed to pay the decretal amount in instalments.

**Background**

- 2.The Deputy Registrar issued the taxation ruling dated 10.3.2024 through which she taxed the advocate-client bill of costs dated 7.8.2024 at Kshs. 2,460,004.36/-.

3.A certificate of taxation was issued on 14.3.2025.

4.The advocate filed an application dated 9.4.2025 for entry of judgment in accordance with the certificate of costs.

5.Judgment was entered on 4.6.2025.

### **Application**

6.The client filed the notice of motion dated 16.4.2025 seeking permission to pay the decretal amount by way of an initial deposit of Kshs. 100,000/- and instalments of Kshs. 80,000/- until payment in full.

7.The application is made primarily under **order 21 rule 12 (2) of the Civil Procedure Rules.**

8.The application is supported by an affidavit sworn by the client on 16.4.2025 and written submissions dated 14.9.2025.

9.The advocate opposed the application through a replying affidavit sworn by Dr. Wambui Njogu on 2.5.2025 and written submissions dated 4.7.2025 and 18.9.2025.

### **Client's case**

10. The client's case is that she is unable to pay the decretal amount in a lumpsum due to financial constraints. She stated that she operates a salon at Ngumo Estate where she derives her income. She also stated that due to the prevailing economic circumstances, she is only able to pay the decretal amount in instalments as proposed.

11. The client relied on: -

**(1) KTK Advocates v Baringo County Government [2018] eKLR**

**(2) Hildegard Ndelut v Letkina Diaries Ltd & Another [2005] eKLR**

### **Response**

12. The advocate highlighted that the decretal amount remains unpaid and continues to accrue interest. She challenged the proposed settlement of the decretal amount by instalments as it would prejudice her due to the long period it would take. She asserted that she stands to be prejudiced as she depends on the amount for her livelihood.

13. The advocate contended that the client has not brought the application in good faith as she intends to escape payment of the fees as she has done from 2011 and thereafter from 2018 leading her to seek court intervention to access her fees.

14. The advocate acknowledged that the client paid Kshs. 400,000/- from 19.5.2025 in four monthly instalments. However, the advocate asserted that good faith would be proposing payment in instalments that are reasonable and not oppressive.

15. The advocate stated that if the court is inclined to allow instalment payments, the same should not exceed four equal monthly instalments including interest on a reducing balance.

16. The advocate relied on: -

**(1) Nahashon Maina & 5 others v Central Park Hotel [2002] eKLR**

**(2) Acorn Properties Limited v Wanjohi & 2 others (Miscellaneous Civil Application 305 of 2017) [2021] KEHC 135 (KLR) (Commercial and Tax)**

## **Analysis and Determination**

17. The Court has the discretion to, 'order that the payment of the amount decreed be...made by instalments on such terms as...to the 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" **Order 21 Rule 12 of the Civil Procedure Rules**

18. The exercise of court's discretionary power to order payment of the decretal sum in instalments depends on the circumstances of each case but is necessarily based on reason. Asking the 'question in each case whether some indulgence can fairly be given to the debtor without unreasonably prejudicing the creditor.' **Keshvaji Jethabhai & Bros Limited v Saleh Abdulla [1959] EA 260,**

19. Relevant factors include; 'the circumstances under which the debt was contracted, the conduct of the debtor, his financial position... where the defendant shows his bona fides by

offering to pay...a fair proportion of his debt at once.” **Keshvaji Jethabhai & Bros Limited**  
**[ibid]**

### **The principle of mercy**

20. At this juncture, in light of the arguments presented, I introduce the principle of mercy which developed in the Christian ‘theology of mercy’ advocating the idea of ‘pulling the poor and the oppressed down from the cross’<sup>1</sup>- a call that has become relevant in the modern world that is infested with entrenched socio-economic inequalities and injustices, conflict and suffering pushing many people to or below the poverty line. These unfortunate manifestations have forced a rethinking and expanding of the principle of mercy into the commercial world as well as in designing policies to address the social-economic needs of the people arising from the prevailing socio-economic inequalities and injustices. Socio-economic rights in article 43 of the Constitution respond to this principle.

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<sup>1</sup>Jon Sobrino, *The Principle of Mercy: Taking the Crucified People from the Cross* (Maryknoll, NY: Orbis, 1994),

21. Insightfully, exploration of the relevant material, social, and structural dimensions of the principle of mercy for application in the commercial world should not be seen as substantial alteration of the traditional doctrine, but as a development of, 'not a rupture with, the objects of the principle'<sup>2</sup>. Thus, the application of the principle of mercy in the commercial world must not be merely on feelings and sympathy but on active and lawful justifications based on law and circumstances of the case.

22. I add also that; the principle of mercy is not entirely new or strange in criminal cases. It manifests itself especially in sentencing and in restorative justice post sentence in remission and parole program; and now it has also been expressed as power of mercy in article 134 of the Constitution.

23. Be that as it may, I have considered the position taken by the parties. The client proposed to pay the decretal amount in instalment due to financial hardship.

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<sup>2</sup> Todd Walatka, *The Principle of Mercy: Jon Sobrino and the Catholic Theological Tradition*, *Theological Studies* 2016, Vol. 77(1) 96-117

24. But, the advocate asserted the right to enjoy the fruits of the judgment from which she derives livelihood. She also stated that the prevailing economic circumstances affects both parties.

25. The client argued that she has shown good faith by paying some instalments.

26. The advocate acknowledged that the client paid Kshs. 400,000/- in four monthly instalments. She however, indicated that she is amenable to settlement of the decretal amount through four equal monthly instalments including interest on a reducing balance.

27. In balancing the interest of the parties herein, care must be taken not to leave the applicant to her fate nor unreasonable prejudice the decree-holder. In conclusion, I find the client's proposal to pay the decretal sum in monthly instalments of Kshs. 80,000/- to be on the lower side. Given the advocate's willingness to accept payment by four equal instalments including interest on a reducing balance, I allow the client's application dated 16.4.2025, in the following terms: -

**(1)The client will pay the balance of the decretal sum together with costs and interest on reducing balance in monthly instalments of KE. 150,000 until payment in full starting from 3.4.2026 and thereafter on 3rd day of each succeeding month until payment in full.**

**(2)In default of payment of any instalment, execution to issue.**

**(3)In the circumstances of this case, I order each party to bear own costs of the application.**

**Dated, signed and delivered at Nairobi through  
Microsoft Teams online application this 19<sup>th</sup>  
day of March, 2026**

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**F. Gikonyo M**

**Judge**

**In the presence of: -**

Ms. Dr. Wambui for Advocate

Ms. Ngunyi for Client

CA- Ivan/Aggrey

