

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MALINDI**  
**CIVIL APPEAL NO. E087 OF 2021**

**WANJIRU YUSUF ABDALLA.....APPELLANT**

**VERSUS**

**ELIZABETH  
EWINS.....**

**MWENI  
RESPONDENT**

**R U L I N G**

1. Before this Court for determination is a Notice of Motion dated 25.10.24, in which the Appellant seeks in the main that she be allowed to pay the amount of Kshs. 476,838/= in the certificate of taxation dated 24.6.24 in monthly instalments of Kshs. 20,000/=. She also seeks a declaration that the notice to show cause (NTSC) dated 7.10.24 issued in the matter is premature and incurably defective.
2. The Applicant states that following dismissal of her appeal, the Respondent filed a party and party bill of costs which was on 28.5.24 taxed at Kshs. 476,838/=; that by a letter dated 24.7.24, she proposed to the Respondent's advocates to pay the said amount in monthly instalments of Kshs. 20,000/=; that she has now been served with the NTSC which is fatally defective, as Order 22 Rule 18 of the Civil Procedure Rules under which the notice was issued envisages that the decree being executed should be a year and above; that the Applicant has a similar certificate of taxation and NTSC in ELC Case No. 109 of 2018; that the Applicant is not in a financial position to pay the pending amounts; that it is in the interest of justice and overriding objectives of the law that the Application be allowed as prayed.
3. The Respondent opposed the Application *vide* a replying affidavit sworn on 19.11.24. She stated that the Application is unmeritorious, vexatious, a waste of the Court's time and an abuse of the court process; that the issues herein could have been raised in response to the NTSC or at the hearing thereof; that the Applicant has not attached an affidavit of means to show that she is incapable of paying the decretal amount and that she should pay in the instalments proposed; that the amount proposed is unreasonable as it would take about 23 months to settle the amount due, which would deny her the fruits of her judgment, yet it was the Applicant who dragged her to court; that if the Court is inclined to allow payment by instalments then the Applicant should be ordered to deposit at least 50% and the balance in reasonable instalments. The Respondent urged the Court to dismiss the Application.

4. It is trite law that when a case is filed in a court, it must be fully argued before that court and escalated through the court system, unless there are reasons for not doing so, which must be stated.
5. When the NTSC was filed, the Applicant had the recourse to challenge the NTSC in a response thereto and the same would have been competently dealt with. The specific issue the Applicant raises of the competence of the NTSC and the proposal to settle the decretal amount could have been raised in her response to the same. She has not stated the reasons why she did not opt for that course of action and chose rather to file this Application.
6. The jurisdiction to issue and hear the NTSC is vested in the Hon. Deputy Registrar of this Court. In **Haki Na Sheria Initiative v Inspector General of Police & 2 others; Kenya National Human Rights and Equality Commission (Interested Party) [2021] KESC 22 (KLR)**, the Supreme Court stated:

*That is, the Supreme Court recognizes and respects the constitutional competence of courts in the judicial hierarchy to resolve matters before them. We stated this principle in the case of Peter Oduor Ngoge v Francis Ole Kaparo & 5 Others, Supreme Court Petition 2 of 2012 [2012] eKLR at paragraphs 29-30:*

*“The Supreme Court, as the ultimate judicial agency, ought in our opinion, to exercise its powers strictly within the jurisdictional limits prescribed; and it ought to safeguard the autonomous exercise of the respective jurisdictions of the other courts and tribunals. In the instant case, it will be perverse for this court to assume a jurisdiction which, by law, is reposed in the Court of Appeal, and which that court has duly exercised and exhausted.*
7. Just like the Supreme Court, this Court recognizes and respects the constitutional competence of courts in the judicial hierarchy to resolve matters before them, including the competence of the Hon. Deputy Registrar to hear and determine the NTSC in question. In the premises, the Court finds that the filing of the present Application rather than a response to the NTSC is clearly designed to circumvent the NTSC. This is an abuse of the court process and the Court must guard against and protect itself from such abuse. Accordingly, this Court declines to assume jurisdiction over the NTSC, which is properly before the Hon. Deputy Registrar.
8. In the end, the Court finds that the Application dated 25.10.24 lacks merit and the same is dismissed with costs to the Respondent.

**DATED, SIGNED and DELIVERED at Malindi this 30<sup>th</sup> day of April 2026**

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**M. THANDE**  
**JUDGE**