



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL DIVISION**  
**CIVIL MISC. APPLICATION NO.E089 OF 2021**  
**IN THE MATTER OF ADVOCATE – CLIENT BILL OF COSTS**

**B.M. MUNG'ATA & CO. ADVOCATES .....APPLICANT/RESPONDENT**

***VERSUS***

**JOHN MUTHINI KAMIA ..... RESPONDENT/APPLICANT**

**RULING**

1. By the Notice of Motion dated 28<sup>th</sup> August, 2025, the Client/Respondent Applicant seeks two orders to wit:-

- “1. A stay of execution of the decree dated 1<sup>st</sup> July 2025 arising from taxed advocates/clients costs.***
- 2. An order to pay/liquidate the said costs of kshs.672,800/- in monthly installments of Kshs.50,000/-.***

The application is expressed to be brought under **Order 21 Rule 12 of the Civil Procedure Rules.**

2. The application is premised on grounds that the Applicant is unable to pay the decretal sum at once; that the application is made in good faith and that the Applicant is able to satisfy the decree by means of reasonable installments.

3. The application is vehemently opposed by the Advocate/Respondent. It is contended that the Applicant has only made vague assertions of hardship or inconvenience which do not amount to substantial loss as would warrant this court to grant a stay of execution of the decree; that the Applicant has not in any event met the other conditions set by **Order 42 Rule 6(2)** and his application should be dismissed. It is further argued that justice must be balanced between the parties so as not to unjustly deprive the decree holder of the fruits of their judgment. It is contended that in this case the Advocate/Respondent has waited since 2021 and this application is but a delaying tactic. Further that no case has been made for payment in installments as he has not demonstrated his bona fides in liquidating the decretal sum.
4. I have carefully considered the application, the grounds thereof, the competing affidavits, the rival submissions of the learned Advocates for the parties and the law. The issue for determination is whether the Applicant ought to be allowed to liquidate the taxed costs by way of monthly installments of Kshs.50,000/-. In my view at this stage the issue of stay of execution is neither here nor there.
5. The discretion to allow a judgment debtor to liquidate a decree by instalments stems from **Order 21 Rule 12 of the Civil Procedure Rules** which states:-

**“ [12] Decree may direct payment by instalments**

***(1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.***

*(2)After passing of any such judgment or decree, the court may on the application of the judgment-debtor and with the consent of the decree-holder or without the consent of the decree-holder for sufficient cause shown, order that the payment of the amount decreed be postponed or 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.”*

6. Being an exercise of discretion the court must not withhold the order capriciously but at the same time it must not act whimsically. There is a long line of cases dealing with this issue. One such case is **Keshavji Jethbai & Bros limited v Saleh Abdulla [1959] EA 260** where the court held that hardship is one of the factors to be taken into consideration. The court stated:-

*“Defaults if due to the recession (if such it can be called) might be no fault of the debtors and in some circumstances might have been properly taken into consideration by the court in favour of the debtor when consideration was given to an application for installments; hardship is a factor which has been recognized by superior courts.*

*It is a question in each case whether some indulgence can fairly be given to the debtor without unreasonably prejudicing the creditor, who can be granted compensation by way of interest on the amount at the time outstanding.”*

7. The court must, whilst considering the hardship of the judgment debtor, also consider the prejudice that may be occasioned to the judgment creditor. The debtor must also demonstrate sufficient cause to be granted the order. I am persuaded by the decision of the court in the case of **Lavington Security limited, Hildegard Ndelut –v Letkina Dairies Limited & another [2005] eKLR** where it was stated:-

*“A judgment creditor is entitled to payment of the decretal amount, which he should receive promptly to reap the fruits of the judgment. The judgment debtor might genuinely be in a difficult position in paying the decretal amount at once. However, he has to show seriousness in paying the amount. In that event he should show his bona fides by arranging fair payment proposals to liquidate the amount.”*

8. Similarly the case of **Diamond Star General Trading LLC v Ambrose D O Rachier carrying on business as Rachier & Amollo Advocates [2018] eKLR** where Nzioka J cited the case of **Keshvaji Jethabhai & Bros limited v Saleh Abdulla (supra)** where it was held inter alia that inability of a debtor to pay in full at once is not a sufficient reason for exercise of the court’s discretion.
9. It is also trite that the applicant must demonstrate his/her bona fides by being ready to pay a fair proportion of the decretal sum – see the case of **Lavington Security limited, Hildegard Ndelut v Letkina Dairies limited & another [2005] eKLR (supra)**.
10. This court must consider the present application in light of the above laid down legal principles.
11. It is instructive that the costs culminating in the impugned decree were taxed way back on 10<sup>th</sup> November 2021. On 9<sup>th</sup> December 2021 the Applicant filed an application seeking to stay the resulting decree and for enlargement of time to file a reference. That application was allowed in its entirety. However, upon hearing the reference that was filed pursuant to the ruling delivered on 21<sup>st</sup> July 2022, my predecessor, Muigai J, found the reference not merited and dismissed it vide her ruling dated 31<sup>st</sup> May 2023. Judgment on the taxed costs was subsequently entered by this court on 17<sup>th</sup> February 2025. I take notice of the fact that the

Applicant has not paid any part of the costs since the reference was dismissed. A party coming to court for a discretionary order must demonstrate their bona fides. The Applicant has not demonstrated that he tried to pay any part of the taxed costs but the payment was rejected. I am therefore tempted to believe that he makes this application merely as a delaying tactic. This is more so given that he has not demonstrated that he has no means to pay the decretal sum in lumpsum. Instead he shifts the burden to the Respondent by stating that the Respondent has not demonstrated that he has the means to pay.

12. Be that as it may, considering the economic situation in the contrary a fact which is not lost to this court, it is willing to extend some indulgence to the Applicant. He must however, demonstrate his bona fides by paying a reasonable proportion of the decretal sum at once and the rest in installments as follows:-

- (a) To pay a sum of Kshs.300,000/- (three hundred thousand shillings) within thirty (30) days of today's ruling.**
- (b) The balance of kshs.372,800/- in consecutive monthly installments of Kshs.60,000/- until payment of the decretal sum together with whatever interest that is accruing, until payment in full.**
- (c) In default of payment of the sum in (a) or any installment in (b) the Advocate/Respondent shall be at liberty to execute.**

Orders accordingly.

**Ruling signed, dated and delivered virtually on this 30<sup>th</sup> day of April 2026.**

**E. N. MAINA  
JUDGE**

**In the presence of:**

**Mr. Kivui Advocate for the Advocate/Respondent**

**No appearance for the client/Applicant**

**Mary - Court Assistant/Interpreter**

ORIGINAL