



**Kemboy Law Advocates v Njonjo & 3 others (Miscellaneous Application E041 of 2024) [2025] KEELRC 2194 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2194 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E041 OF 2024**

**L NDOLO, J  
JULY 24, 2025**

**BETWEEN**

**KEMBOY LAW ADVOCATES ..... ADVOCATE**

**AND**

**PETER NJONJO ..... 1<sup>ST</sup> APPLICANT**

**JUSTINE WANJIKU OGWAPIT ..... 2<sup>ND</sup> APPLICANT**

**GRANT EARL BROOK ..... 3<sup>RD</sup> APPLICANT**

**NEO KENYA LIMITED (SUED THROUGH TWIGA FOODS LIMITED, ITS SUCCESSOR IN TITLE) ..... 4<sup>TH</sup> APPLICANT**

**RULING**

1. By a ruling dated 20<sup>th</sup> February 2025, I declined the Applicants’ plea to set aside a taxation award issued on 24<sup>th</sup> September 2024. Subsequent to this, I recorded a consent on 2<sup>nd</sup> April 2025, adopting the Certificate of Taxation dated 12<sup>th</sup> March 2025, as a judgment of the Court.
2. Thereafter, the Applicants filed a Chamber Summons application dated 14<sup>th</sup> April 2025, asking for stay of execution of the decree dated 2<sup>nd</sup> April 2025, with an opportunity to settle the decretal sum in seven (7) monthly instalments of Kshs. 500,000 beginning 30<sup>th</sup> April 2025, with an eighth and final instalment being Kshs. 999,779.
3. The application is supported by an affidavit sworn by the 4<sup>th</sup> Applicant’s Legal Manager, Beatrice Maiyo and is based on the following grounds:
  - a. The 4<sup>th</sup> Applicant is willing to settle the decretal amount in full;
  - b. The 4<sup>th</sup> Applicant proffered a settlement schedule to the Advocate, vide emails dated 20<sup>th</sup> February 2025 and 4<sup>th</sup> March 2025, in which it offered to settle the decretal sum in eight



monthly instalments beginning 30<sup>th</sup> April 2025, whereby the first seven instalments would be Kshs. 500,000 with the eighth and final instalment being Kshs. 999,779;

- c. The 4<sup>th</sup> Applicant is genuinely in a difficult position in paying the decretal amount at once;
  - d. The application has been filed expeditiously and the first instalment is proposed to be paid on or before 30<sup>th</sup> April 2025;
  - e. The 4<sup>th</sup> Applicant is at serious risk of being crippled financially and is apprehensive that should its cash flow not be managed, its entire operation and employee jobs would be put to the guillotine.
4. In her affidavit in support of the application, Beatrice Maiyo depones that Dancy Auctioneers, acting on instructions from the Advocate, have proclaimed the 4<sup>th</sup> Respondent's tools of trade being; motor vehicles, office furniture and work machines, in execution of the decree emanating from the Certificate of Taxation adopted as a judgment of the Court on 2<sup>nd</sup> April 2025.
  5. Maiyo further depones that prior to adoption of the Certificate of Taxation, the 4<sup>th</sup> Respondent had, *vide* an email dated 20<sup>th</sup> February 2025, offered to settle the decretal sum in eight instalments beginning 30<sup>th</sup> April 2025, with seven instalments of Kshs. 500,000 and a final one of Kshs. 999,779.
  6. The Advocate opposes the application by a replying affidavit sworn by Ruth Wainaina-Kemboi, Advocate on 23<sup>rd</sup> April 2025. Counsel terms the application as no more than a frivolous and vexatious attempt to undermine the judgment and decree in favour of the Advocate.
  7. Counsel takes the view that the application does not meet the threshold for grant of stay of execution under Order 42 Rule 6 of the *Civil Procedure Rules*, as the decretal sum is not contested and there is no declared intention to appeal against the enforcement of the Certificate of Taxation.
  8. Counsel depones that the 4<sup>th</sup> Applicant has not demonstrated the specific loss it will suffer if the order of stay is not granted. She adds that the averment that the 4<sup>th</sup> Applicant is unable to settle the decretal sum at once is not supported by any evidence.
  9. Counsel further alludes to an impending restructuring of the 4<sup>th</sup> Applicant's business, involving transfer of assets, contracts and a small number of staff to a new company. She claims that the restructuring is aimed at avoiding significant obligations, while continuing operations under a new corporate entity.
  10. Although the parties devoted a significant part of their submissions on the provisions of Order 42 Rule 6 of the *Civil Procedure Rules*, the substratum of the application is premised on Order 21 Rule 12 which provides as follows:
    12.
      - (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 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 in instalments on such terms as to the payment of interest, the



attachment of property of the judgment- debtor or the taking of security from him, or otherwise, as it thinks fit.

11. In the Advocate’s submissions dated 12<sup>th</sup> May 2025, reference was made to the decisions in *Botanics Kenya Ltd v Ensign Food (K) Ltd* [2016] KEHC 5870 (KLR) and *Rajabali Alidina v Remtulla Alidina & another* [1961] EA 565 where the applicable principles in adjudicating an application under Order 21 Rule 12 of the *Civil Procedure Rules* were established as follows:
  - a. The circumstances under which the debt was contracted;
  - b. The conduct of the debtor;
  - c. The financial position of the debtor and;
  - d. The debtor’s *bona fides* in offering to pay a fair proportion of the debt at once.
12. Reference was also made to the decision in *Freight Forwarders Ltd v Elsek & Elsek (K) Ltd* [2012] eKLR where Mwongo J held that a debtor seeking to be allowed to settle a debt in instalments must demonstrate inability to pay in lump sum and offer reasonable monthly instalments. The learned Judge added that the application must be made in utmost good faith.
13. The Advocate further relied on *Hildegard Ndalut v Lelkina Diaries Ltd & another* [2005] eKLR where Dulu J stated as follows:

“...a defendant should be required to show his bona fides by arranging a fair payment of the proportion of the debt-in persuading the court to allow payment by way of instalments. This, in my view, is the proper test to apply in granting orders for payment of a decretal amount by way of instalments. 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. “
14. In *Keshanji Jethabhai & Brothers Limited v Saleh Abdullah* [1959] EA 260 it was held that the mere fact that a judgment debtor has cash flow challenges is not a sufficient reason to allow liquidation of a debt in instalments.
15. In the instant case, the 4<sup>th</sup> Applicant alludes to financial challenges, without details and without supporting evidence. Moreover, it is on record that the 4<sup>th</sup> Applicant resisted payment of the debt up until the time this Court overruled its objection to the taxation by the Taxing Master.
16. Further, even after obtaining interim relief from my brother, Manani J on 16<sup>th</sup> April 2025, the 4<sup>th</sup> Applicant has not made any payment towards liquidation of the debt. This cannot be a sign of good faith as required of a party seeking the exercise of discretion under Order 21 Rule 12 of the *Civil Procedure Rules*.
17. Overall, I am not persuaded that the Applicants have made out a case to be allowed to settle the debt in instalments. The application dated 14<sup>th</sup> April 2025 is therefore dismissed with costs to the Advocate. The interim orders granted on 16<sup>th</sup> April 2025 are vacated.
18. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY 2025**

**LINNET NDOLO**



## **JUDGE**

Appearance:

Mr. Kere for the Advocate

Mr. Otieno for the Applicants

