



**Muchungi v Green Belt Movement (Cause 1418 of 2017)  
[2022] KEELRC 3982 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3982 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1418 OF 2017  
K OCHARO, J  
SEPTEMBER 22, 2022**

**BETWEEN**

**LILIAN MUCHUNGI ..... CLAIMANT**

**AND**

**GREEN BELT MOVEMENT ..... RESPONDENT**

**RULING**

1. Through its Notice of Motion Application dated June 30, 2022, the Respondent/Judgment Debtor seeks that this Court allows it to liquidate the decretal sum herein in instalment of Kshs 10,000 per a month after making a down payment of 20% of the decretal sum.
2. The Application is anchored on the grounds obtaining on the face of the application, the supporting affidavit of Shadrack Mutembi sworn on June 30, 2022 and his further affidavit sworn on July 12, 2022.
3. The Claimant/Decree Holder opposed the Application anchored on the grounds obtaining in her replying affidavit sworn on July 7, 2022.
4. The Judgment Debtor contends that it is willing to settle the decree but does not have sufficient funds to do so in lumpsum.
5. It was further contended in support of the application that the Respondent's /Judgment Debtor's financial inflow wholly depends on donor funds. Each donation that it gets, comes with stringent conditions on how it should be utilized with regard to the mission of both the Respondent and the funding organization.
6. The grants received are restricted and each budget line has to be utilized as per the signed agreement / contract between the Respondent / Judgment Debtor and the donor organization.
7. Following the Covid-19 Pandemic, it has been experiencing diminished levels in funding, despite its fund-raising team having submitted proposals to donors and making follow ups.



8. The audited accounts and proforma invoice for the period up to May 2020 is testament of the Respondent's constrained financial position.
9. It was asserted that despite the reflection in the proforma invoice and bank balance of Kshs 66 Million, the Respondent / Judgment Debtor has current liabilities standing at Kshs 85,379.763.00. They include both payable and restricted deferred income. It has no budget for employee liabilities currently.
10. The Respondent has already released to counsel for the Claimant / Decree Holder a sum equivalent to 20% of the decretal amount. The amount was paid in absolute good faith and promptly upon conclusion of the taxation process.
11. In opposition to the application the Claimant / Decree Holder argued that the Application is devoid of merit and is an abuse of the court process as, the filing of the suit herein was necessitated by the Respondent's conduct of unfairly terminating the Claimant's employment; the suit has been in court for over five years; the Respondent intends to delay the matter further for another 8 years, and the Respondent is guilty of delay in making the instant application noting that the judgment was delivered on February 28, 2022.
12. The Claimant / Judgment Creditor contended that as a former employee of the Respondent and a full member of the Green Belt Movement, she knows for a fact that the Respondent has a budget for employee liabilities, current & former, a fact which the Respondent has deliberately concealed to mislead the Court.
13. The Respondent has not placed any proof before the Court to demonstrate that the sum of Kshs 66 Million held in its bank account is encumbered in any manner.
14. The Respondent's Application is an extension of the Respondent's tactics to unfairly deprive the Judgment Creditor of the right to have litigation concluded expeditiously.
15. The proposal to settle the decretal amount standing at Kshs 827,886, at monthly instalment of Kshs 10,000 is unreasonably low. It will take eight [8] years to have the sum duly liquidated.
16. A grant of the orders sought in favour will immensely prejudice the Claimant/ Decree Holder who has been out of employment for a period of more than six [6] years now without an income.
17. Counsel Ms Kashindi for the Respondent / Judgment Debtor in her submissions largely reiterated the contents of the grounds obtaining on the face of the application and the two affidavits hereinabove mentioned filed by the Respondent / Judgment Debtor.
18. Counsel submitted that Order 21 rule 12 of the *Civil Procedure Rules* confer upon this Court authority to order settlement of the decretal sum in installments. The authority can also be drawn from section 3 and 12 of the *Employment and Labour Relations Court Act*. To buttress her submissions, she placed reliance on the case of *John Wanjobi Wakabora vs. Link Communications* [2022] eKLR.
19. It was submitted that the discretion to grant an application for settlement of a decretal sum in instalments is unfettered.
20. Mr Njuguna, Counsel for the claimant Decree Holder submitted that from the Respondent's financial statement dated May 31, 2022, it is discernable that there is a sum of Kshs 38 Million which is unrestricted.
21. There is nothing that has been placed before the Court to demonstrate any restriction on the Respondent's / Judgment Debtor's funds as alleged.



22. To propose to liquidate a decretal sum for a period of 87 months as the Respondent has done is testament of lack of bona fides on the part of the Applicant.
23. Mr Njuguna submitted that the Respondent /Applicant is guilty of laches in bringing up the Application. He contends that the application was filed five [5] months after judgment. The Applicant was awoken by the execution process.
24. Considering that the matter stayed in the corridors of justice for 5 years, it will be prejudicial for the court to order that the decretal sum be liquidated in instalments.
25. In response, Counsel for the Respondent/JD argued that the Claimant's / Decree Holder's submissions are as a result of a misapprehension of the Respondent's / Judgment Debtor's accounts and more specifically the explanation on the accounts as brought out in the affidavits it has filed herein. According to the her the accounts reveal only Kshs 240,000 as the unrestricted amount.
26. The Respondent had to wait for the taxation of party and party costs to know how much in total it was to pay under the decree. The taxation was done on June 6, 2022 and the application filed only 3 weeks thereafter. The Respondent cannot be accused of undue delay in filing the application.

### **Determination**

27. The only issue that I distill for determination in the instant application is whether this court can exercise its discretion to allow the decretal amount herein be liquidated in instalments of Kshs 10,000 per a month.
28. Order 21 Rule 12[2] of the Civil procedure Rules, 2010 provides as follows: -

“ 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 decree amount 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.”
29. No doubt, the provisions of Order 21 Rule 12 [R] of the Civil Procedure bestows upon the trial court a wide discretion in matters application for postponement of payment of the decretal amount or for settlement of the same instalments. However, sight should not be lost that the discretion is one whose exercise is not at large. In *Abdisalan Abdi Ali Ismail v Gilbert Abdi Ali & 2 others* [2019] eKLR, the court stated, and I agree:

“ As such the provisions of Order 21 Rule 2010 give the trial court a wide discretion as to whether payment of the amount decreed be postponed or settled by way of instalments. Such discretion must be exercised in a judicial and not an arbitrary manner as was held in *A Rajabali Alidina v Remtulla Alidina & Anor* [1961] E A 565, Law JA where it was stated that:

“All commentators on the Civil procedure Code agree that the Court's discretion to consider payment of the decretal amount in instalments is one which must be exercised in a judicial and not arbitrary manner. The onus is on the defendant to show that he is entitled to indulgence under this rule.”



30. In *Hildegard Ndalat v Lelkina Dairies Limited & another* [2005] eKLR, Dulu J on the conditions considerable stated:

“Both parties have referred to the case of *Keshavji Jethabhai & Brokers Limited v Saleh Abdulla* [1959] E A 260, which is a case from a High Court of Tanganyika. That case followed the principles laid down in the Indian case of *Sawatram Ramprasad vs Imperial Bank of India* [1933] AIR Nag.33, that a defendant should be required to show her bona fide by arranging 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 installments. 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 bona fide by arranging fair payment proposals to liquidate the amount.”

31. In *Freight Forwarders Limited v Elsek [K] Limited* [2012] eKLR, the Court held that in order for an Applicant to attract a favourable exercise of the Court’s discretion under Order 21[2] of the Civil Procedure he or she must demonstrate that he or she is unable to pay in lump sum, that he will pay the decretal amount in reasonable instalments, and that the application is made in utmost good faith.
32. It is through these lens that I shall consider the merits or otherwise of the Judgment Debtor’s Application.
33. There is no contest that at the filing of the Judgment Debtor’s application herein, the decretal amount stood at Kshs 827,886. The Court has not lost sight that the Judgment Debtor has thereafter paid Kshs 161,233. The Judgment Debtor proposes to settle the balance, which I must state shall continue attracting interest at court rates, until it is fully liquidated, in instalments. This Court cannot be off mark to conclude that therefore full liquidation of the decretal sum will take up to more than sixty-five [65] months.
34. The question that comes up then, at this point, is whether considering the decretal sum outstanding, the instalment proposed and the time likely to be taken to have the same fully liquidated by the instalments, the proposed monthly instalment is reasonable. Considering these factors, I have no doubt in my mind that the proposed instalment amount is too low and not reasonable.
35. Bona fides on the part of a Judgment Debtor / Applicant in an application as the instant one, is inter alia gauged on the proposed mode of liquidation of the decretal sum. Having found that the offered liquidation instalment figure is overly low, I find that the Judgment Debtor / Applicant has not demonstrated bona fides in the bringing up the application herein.
36. The Judgment Debtor / Applicant contends that its finances are restricted, that it can only apply the finances only in accord with the agreement between its donors and it, that it has no funds for employee liabilities currently. This leaves one to wonder, where the amount that it has already paid came from, and where the proposed instalment amounts are to flow from therefore. This court is not told when finances for employee liabilities will be available.
37. There is not doubt that from the accounts placed before this Court, there is a sum of Kshs. 66 Million to the credit of the Applicant, in its bank account[s]. The allegation that the funds are restricted remains a bold assertion without proof. No evidence was placed before Court to demonstrate the restriction,



and that the restrictions are cast on stone. I am convinced therefore that the Applicant has not been able to demonstrate that it is unable to pay the decretal sum at once.

38. To allow applicant as sought shall mean that the Judgment Debtor will only manage to realize her rights more than 11 [eleven] years from the date of accrual of the cause of action in regard thereto. Surely it cannot be an exercise of the Court's discretion judiciously and without arbitrariness.

39. By reason of the premises herein above, I find that the Applicant's application lacks merit and it is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER, 2022.**

**OCHARO KEBIRA**

**JUDGE**

**Delivered in presence of:**

**Mr Njuguna the for Claimant.**

**Mrs Miringu for the Respondent.\*\***

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**OCHARO KEBIRA**

**JUDGE**

