



**Redeemed Gospel Church Meru & another v Mwirebua & 2 others;
Muthuri & another (Third party) (Environment & Land Case
E003 of 2020) [2024] KEELC 7308 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7308 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E003 OF 2020**

**CK NZILI, J
OCTOBER 30, 2024**

BETWEEN

**REDEEMED GOSPEL CHURCH MERU 1ST PLAINTIFF
ESTHER WANJIRU M'MATHIU REGISTERED TRUSTEE OF THE 1ST
PLAINTIFF) 2ND PLAINTIFF**

AND

**ANN MWARI MWIREBUA 1ST DEFENDANT
GLADYS KAROKI MWIREBUA (AS THE ADMINISTRATRIX OF THE ESTATE
OF DAVID MWIREBUA BARETHI - DECEASED) 2ND DEFENDANT
JANE KATHAMBI 3RD DEFENDANT**

AND

**JADIEL MUTHURI THIRD PARTY
LAND REGISTRAR MERU THIRD PARTY**

RULING

1. What is before the court is an application dated 22.8.2024 in which the 1st defendant and a judgment debtor seek:
 - a. Leave to act in person.
 - b. Stay of execution of the orders made on 1.8.2024.
 - c. Review of the taxed bill of Kshs.443,465/=, to the extent that each of the defendants pays 1/3 of the same.



- d. Leave to liquidate the 1/3 in monthly installments of Kshs.5,000/= per month.
2. The grounds are set out on the face of the application and in an affidavit of Ann Mwari Mwirebua sworn on 22.8.2024. It is averred that following delivery of judgment on 25.10.2023, a bill of costs was taxed on 1.8.2024 at Kshs.443,465/=, though the court was not specific on whether costs should be paid jointly or severally by all the defendants; hence, there was need to apportion it equally among the defendants. The applicant avers that the 2nd and 3rd defendants have refused to cooperate as they follow on an appeal with her to organize the mode of payment and have instead abandoned her to carry the burden alone.
 3. The applicant avers she is a retired employee aged 72 years sick and receiving a pension of less than Kshs.3,000/= per month, with no other gainful income or financial appeal, and that is difficult for her in the subsisting harsh economic times to satisfy the entire decree. The applicant avers that she sold the land to the plaintiffs with utmost good faith as a beneficiary of the estate of the late Daudi M'Mwirebua, only for some of her siblings to challenge the confirmed grant, otherwise, she did not anticipate this to happen.
 4. Further, the applicant avers that the application is made in good faith; it will be in the interest of justice and fairness to allow it; otherwise, she was bound to suffer irreparable loss, damage, and untold suffering. The applicant relies on a copy of the ruling; letter dated 19.8.2024 from her hospital and a pension statement marked AMM "01, 02, and 03", respectively.
 5. The application is opposed by a replying affidavit sworn by Esther Wanjiru M'Mathiu, the 2nd plaintiff, on behalf of all the respondents sworn on 24.9.2024. It is averred that the respondents have no objection to the applicant acting in person. On the application for review, the respondents aver that it is a disguised appeal for it does not fall within the requirements under Order 45 of the Civil Procedure Rules and Section 80 of the *Civil Procedure Act*; otherwise, the applicant's health and economic status are not some of the conditions set out in the cited law. Reliance was placed on Hosea Nyandika Mosagwe & others vs County Government of Nyamira (2022) eKLR.
 6. It is trite law that costs follow the event under Section 27 of the *Civil Procedure Act*. In the judgment delivered on 25.10.2023, the 1st, 2nd & 3rd defendants' defense and counterclaim and the third-party notice were found incompetent and unmerited. The plaintiff's suit was allowed with costs. The 1st defendant did not appeal against the said judgment save the 2nd and 3rd defendants.
 7. The costs were eventually taxed on 1.8.2024. No reference or appeal has been filed before this court, touching on the taxing master's certificate of costs. The applicant is not attacking the bill on account of merits. She is asking that the same be apportioned among the three defendants and that she be allowed to liquidate it in installments.
 8. In the plaint dated 8.10.2020, the plaintiffs had sought reliefs against the defendants jointly and severally. The question of jointly and severally was addressed in Republic vs Permanent Secretary in Charge of Internal Security; Exparte Joshua Paul (2013) eKLR, that where liability is joint, each one of the joint tortfeasors is liable to settle the total liability.
 9. However, the court said that where it is several, the plaintiff has an option of either directing his claim against any one of the tortfeasors or each of them.
 10. On apportionment of costs in Oasis Park Self Help Group petitioning through John Mutinda and others vs Joinven Investments Ltd & others (2016) eKLR, the application before the court was similar to the instant one. The claim was that the judgment was not specific as to whether the costs was to be borne by the three respondents jointly, severally, or jointly and severally. The court observed that



the ordinary and natural meaning of judgment for costs awarded against several defendants in a single cause, they are jointly and severally responsible for the costs, unless the court specifically apportion the costs.

11. In *Kenya Airways Ltd vs Mwaniki Gichohi Milimani Courts Civil Case No. 423 of 2002*, the court held that the concept of joint several liabilities comprehends one judgment and decree against two or more persons who are liable collectively and individually to the full extent of such decree.
12. Applying the preceding case law, I have no hesitation in finding that there was no clerical error or mistake in the judgment of this court as to whether the costs were to be borne jointly and severally. The claim by the plaintiffs was allowed as prayed. I find no basis to review or apportion the costs against the defendants.
13. The next issue is whether the judgment debtor should be allowed to pay the costs in monthly installments. Order 21 Rule 12 of the Civil Procedure Rules provides that where sufficient reason is given to postpone or pay the decretal sum in installments, the court may, on application by a judgment debtor and with or without the consent of the judgment creditor, with sufficient cause shown, order that the payment of the amount decreed be postponed or be made in installments, 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 deems fit.
14. Addressing the said discretion of the court in *Kesharal Jethabhai and Brothers Ltd vs Saleh Abdul (1959) EA 260*, the court observed that each case has to be considered on its own merits and that mere inability to pay in full at once was not sufficient reason, unless the judgment debtor shows bona fide, by arranging prompt payment, though hardship may be a factor.
15. In *Hildegard Ndelut vs Letkina Dairies Ltd and another (2005) eKLR*, the court held that a judgment debtor should show seriousness in paying the amount to the judgment creditor, who has a right to prompt payment of the decretal amount, unless the payment proposals are fair. In *Mohamed Akbar Khan vs Kasturchand Daga* cited in *Keshavji Jethabhai & Brothers Ltd vs Saleh Abdul [1959] EA 260*, the court held that the mere fact that the debtor is hard-pressed or unable to pay in full, was not a sufficient reason.
16. An applicant seeking the court's discretion must, therefore, show sincerity and make full disclosure of his financial position. That is what bona fide is all about. The circumstances of the debt must also be considered, as well as the character of the applicant. See *Diamond Star General Trading LLC vs Ambrose D O Racher t/a Rachier & Amollo Advocates 2018) eKLR* and *A. Rajabali Alidina vs Remtulla Alidina & Another [1961] E.A. 565*.
17. In the suit before the court, it is the 1st defendant who failed to honor the contract by delivering vacant possession of the land. After the suit was filed against her, the 1st defendant denied liability including receipt of the purchase price, necessitating the litigation. These are contained in the 1st defendant's statement of defense dated 12.4.2021.
18. The sale agreement was made on 8.1.2010. The 1st defendant received the amount of Kshs.1,300,000/= in full, handed over vacant possession, but refused to deliver the title deed. The conduct, therefore, has to be looked at from 2010 to the present, for the court to establish if she deserves the exercise of its discretion to postpone the payment of the debt or allow it to be liquidated in Kshs.5,000/= per month as requested. Good, sufficient and adequate reasons is what the court requires of the judgment debtor. See *William Ndeti t/a Ndeti Enterprises vs NIC Bank Limited [2020] eKLR*. The figure proposed must be consistent with the debt. It must be a reasonable share of the total amount as held in *Lavington Security Ltd vs Nairobi City Water and Sewerage Co. Ltd (2014) eKLR*.



19. In Singh Gitau Advocates vs City Finance Bank Ltd (2013) eKLR, the court observed that undue delay in applying, how the debt was incurred, the bona fide of the party, financial position and hardship, are some of the factors to consider. Other than the medical report and pension statement, the applicant has not said what else in terms of assets she owns. The applicant has not offered security for the debt. The applicant blames the 2nd and 3rd defendants for not stepping in to assist her yet she was the sole cause of the debt and the litigation. The proposed amount is also a tiny percentage of the taxed costs, which would cause unnecessary costs to the judgment creditor in collecting it for an inordinately long period of time.

20. The upshot is that I find the application lacking merits. It is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 30TH DAY OF OCTOBER, 2024**

In presence of

C.A Kananu

Ms. Riungu for the plaintiff

Kibet for 2nd & 3rd defendants

HON. C K NZILI

JUDGE

