



**Mwandaa & 4 others v Mwandaa & another (Civil Appeal
E060 of 2021) [2025] KEHC 8879 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 8879 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E060 OF 2021
AN ONGERI, J
JANUARY 31, 2025**

BETWEEN

**BENJAMIN MWANDAA 1ST APPELLANT
ANDERSON MWAUMBA 2ND APPELLANT
HAMISI KALELA 3RD APPELLANT
PETER MAGHANGA 4TH APPELLANT
ABDALLA KIKO 5TH APPELLANT**

AND

**ELIJAH MWANDAA 1ST RESPONDENT
SULEIMAN MWAMBOGHA 2ND RESPONDENT**

*(Being an appeal from the Ruling of Hon. C. K. Kithinji (PM)
in Voi CMCC No. 161 of 2018 delivered on 13th October 2021)*

JUDGMENT

1. The trial court dismissed an application dated 23rd July 2021 on 13th October 2021 which was seeking for review of the certificate of costs and an order to allow the Appellants herein in liquidate the decretal sum by instalments.
2. The Appellants were aggrieved by the dismissal of the application dated 23rd July 2021 and they have appealed to this court on the following grounds:-
 - i. That the learned trial Magistrate erred in both law and in fact by concluding that the certificate of costs is correct and not exaggerated.



- ii. That the learned trial Magistrate erred both in law and fact by failing to find the certificate of costs as drawn is far much beyond what is provided in the remuneration order.
 - iii. That the learned trial Magistrate erred in both law and fact when she dismissed the appellant's application dated 23rd July 2021 as a whole.
 - iv. That the learned Magistrate erred in both law and fact when she held that the Appellants had not proved they were unable to raise the decretal sum in lump sum.
 - v. That the learned Magistrate erred in both law and fact when she took into account extraneous matter to arrive at her decision.
 - vi. That the learned Magistrate erred in both law and fact by failing to consider, review and/or revise the certificate of costs dated 12th May, 2021.
 - vii. That the learned magistrate erred in both law and fact by raising and determining issues that were not raised by the parties.
 - viii. That the learned Magistrate erred in both law and fact by applying high court procedures in the subordinate court.
 - ix. That the learned trial Magistrate erred in both law and fact when he failed to take into account the defendant's submissions.
3. The parties filed written submissions as follows:-
(Julie please summarize both submissions here)
 4. The issues for determination in the appeal are as follows:-
 - i. Whether the trial court was right in dismissing the application for review of the certificate of costs.
 - ii. Whether the trial court should have allowed payment of the decretal sum by instalments of Kshs. 10,000/= per month until payment in full.
 5. On the issue as to whether the trial court was right in dismissing the application seeking review of the certificate of costs, I find that the right procedure was to file a reference from the ruling of the Taxing Officer to the High Court.
 6. The trial court was right in dismissing the prayer for review of the certificate of costs.
 7. On the issue of payment of the decretal sum in instalments, the trial court has a discretion to grant orders allowing payment of the decretal sum by instalments.
 8. The Appellants did not show bona fides by arranging for payment proposals to liquidate the decretal sum.
 9. I find that the appeal herein lacks in merit and I dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 31ST DAY OF JANUARY 2025 VIRTUALLY AND IN OPEN COURT AT VOL.

ASENATH ONGERI

JUDGE

In the presence of:-



Court Assistant: Maina

