



Karibu Homes Parktel Limited v Mburu (Miscellaneous Civil Application E280 of 2023) [2025] KEHC 3690 (KLR) (Civ) (26 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3690 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION E280 OF 2023

LP KASSAN, J

MARCH 26, 2025

BETWEEN

KARIBU HOMES PARKTEL LIMITED APPLICANT

AND

ROBERT GACHII MBURU RESPONDENT

RULING

1. The Respondent/Applicant herein filed an Application dated 24.04.2023 under section 36 of the *Arbitration Act*. The same was unopposed and time for setting aside had lapsed, the Court adopted the Arbitral award dated 06.03.2023 by David Mereka with the Respondent to pay costs assessed at Kshs 50,000/=.
2. The terms of the Arbitral award dated 06.03.2023 were that:
 - a. The Respondent is in breach of the terms and conditions of the Agreement for sale dated 26th February 2021 between the parties and relating to the property,
 - b. The Respondent do hand over Apartment Number 2, Paris Court Block K to the Claimant located on LR No. 10426/252 fully completed, in a habitable condition and within the next 30 days from the date of collection of this award.
 - c. The Respondent do hand over to the Claimant a registered lease for Apartment No. 2, Paris Court, Block K, on LR No. 10426/252 within the next 30 days from the date of collection of this award.
 - d. The Respondent do continue to pay the Claimant the amount of Kshs 22,000/= per month from 1st March 2021 until the hand over of the said Apartment No. 2, Paris Court, Block K, on LR No 10426/252.



- e. The costs follow the event and I therefore award costs to the Claimant against the Respondent for these arbitral proceedings as itemized in my email to the parties.
3. The arbitral award having been adopted as an order of the Court and the Respondent/Applicant seeks to enforce it through execution. To forestall that possibility, the Applicant/Respondent has filed the present Application dated 30.04.2024. It seeks the following prayers:
 1. – Spent-
 2. -Spent-
 3. That this Honourable Court be pleased to order and/or allow the Respondent to liquidate the decretal sum herein by way of 18 equal monthly instalments of Kshs 43,000/= each starting May 2024 until payment in full.
 4. That cost of this Application be provided for.
4. The gist and grounds of Application are stated on the face of the Application and are repeated in the Supporting Affidavit and Submissions filed on behalf of Applicant/Respondent. They can be summarized as follows:
 - a. The Applicant/Respondent is willing to pay the arbitral award as adopted by the Court.
 - b. The Applicant/Respondent had written to the Counsel for the Respondent/Applicant with a view of offsetting the award in six monthly instalments.
 - c. Before parties could agree, the Respondent/Applicant sent auctioneers to the Applicant's offices.
 - d. The Applicant/Respondent is cash strapped and is unable to pay the decretal sum which it proposes to settle by way of 18 equal monthly instalments starting May 2024.
 - e. The Applicant/Respondent is at risk to suffer irreparable loss and damage if the Court allows execution.
 - f. It is fair and just that this Application is allowed.
5. The bottom line is that the Applicant/Respondent seeks to settle the decretal amount in instalments of Kshs. 43,000/-. It says that it requests for this accommodation in good faith so that it can remain in business and repay the full amount.
6. The Respondent/Applicant believes that the request is in bad faith. It expresses dismay that given the amounts owed, it would take upwards of 18 months to finish paying the full amount owed. It believes that the proposal is unreasonable. It also believes that the conditions for the grant of the discretionary order are not met in this case.
7. The substantive issue is whether the Court should exercise its discretion to allow the Applicant/Respondent to pay the decretal amounts in instalments of Kshs. 43,000/- per month.
8. The issues for determination are:
 - a. Whether the application seeking to have the decretal sum paid by way of instalments is merited?
 - b. Who is to bear the costs?



Analysis & Determination.

9. The legal rule on payment of a decretal sum in instalments is found under Order 21 Rule 12 of the Civil Procedure Rules, 2010 which provides that:
 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 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.
10. Order 21 Rule 12(2) of the Civil Procedure Rules, 2010 vests the trial court with broad discretionary powers to determine whether a decretal sum should be paid in instalments or its payment postponed. In the seminal case of *A. Rajabali Alidina v Remtulla Alidina & Another* [1961] EA 565, Law JA affirmed that the exercise of such discretion must be judicial rather than arbitrary. Jurists universally concur that this discretion must be guided by established principles and exercised cautiously. The burden of establishing entitlement to this form of indulgence lies squarely with the judgment-debtor.
11. In the *Rajabali Alidina* case supra, the Court emphasized that payment by instalments should only be permitted where "sufficient cause" is demonstrated. The Court set out the guiding considerations in this regard, including: the circumstances surrounding the incurrence of the debt, the debtor's conduct, their financial position, and their bona fides—particularly their willingness to make an immediate and reasonable part-payment.
12. Further judicial guidance can be found in *Hildegard Ndalut v Lelkina Dairies Ltd & Another* [2005] eKLR, where Dulu Ag. J (as he then was) referred to the decision in *Keshavji Jethabhai & Brothers Ltd v Saleh Abdulla* [1959] EA 260 (High Court of Tanganyika), which in turn adopted the reasoning in the Indian authority *Sawatram Ramprasad v Imperial Bank of India* [1933] AIR Nag. 33. These authorities collectively underscore that a judgment-debtor seeking to pay by instalments must affirmatively demonstrate bona fides by proposing a fair and reasonable repayment plan that begins with a good faith initial payment.
13. Moreover, the Court observed that while a judgment-creditor is entitled to the prompt realization of the fruits of their judgment, a judgment-debtor facing genuine financial hardship may be granted relief—provided they evince seriousness and sincerity in discharging the debt. This principle was well illustrated in *Medol Group Ltd v Adrian Company Ltd & Another* [2012] eKLR, where the applicant's good faith was evidenced by a voluntary payment of Kshs. 1,000,000 during the pendency of the application, thereby justifying the court's exercise of discretion to allow settlement by instalments.
14. I will now apply these factors to the case at hand:



15. To begin with, while the Applicant/Respondent expresses willingness to settle the decretal amount, no earnest step has been taken to demonstrate good faith. The Applicant/Respondent did not offer any lump sum or initial payment towards satisfaction of the award. It is trite that a party seeking indulgence must show bona fides by making a genuine attempt to pay a fair portion of the decretal sum upfront. This mirrors the standard in *Medol Group Ltd v Adrian Company Ltd & Another* (2012) eKLR, where a good faith deposit swayed the court in favour of instalment payments.
16. The arbitral award was made on 6th March 2023 and adopted as a court order without opposition, yet the Applicant/Respondent has made no payments since that time. This conduct suggests reluctance rather than inability, especially given the attempt to forestall execution only after auctioneers were sent. That sequence of events undermines the Applicant/Respondent's credibility and does not support a case of financial distress that could justify judicial indulgence.
17. Moreover, the proposal to pay the decretal sum in instalments of Kshs. 43,000/= over 18 months is disproportionate and unreasonable, particularly when considered against the background of the award. The arbitral award included monthly payments of Kshs. 22,000/= dating back to March 2021, and an order for completion and handover of the apartment in a habitable state. These were clear, time-bound directives that the Respondent has failed to honour. Granting indulgence now would further delay justice and deny the Decree-Holder the fruits of their award.
18. Additionally, no documentary evidence or audited accounts have been provided by the Applicant/Respondent to substantiate the alleged cash flow challenges or to outline how the proposed instalments will be financed. The bare statement of being "cash strapped" does not meet the evidentiary threshold required to justify the relief sought. This is just a general statement with no factual evidence.
19. In conclusion, while the discretion to allow instalment payments exists, it is not to be exercised whimsically. The Applicant/Respondent has failed to satisfy the legal tests and factual burden required for the Court to grant this indulgence. Justice demands that decrees, especially those based on arbitral awards that are final and binding, be enforced promptly and without undue delay.
20. The upshot is that the Application dated 30.04.2024 is without merit and is dismissed with costs.
21. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2025.

HON. L. KASSAN

JUDGE

In the presence of;

No appearance for the Applicant

Wachira for the Respondent

Carol – Court Assistant

