



REPUBLIC OF KENYA



KENYA LAW
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Mauti v Kinyamal (Civil Appeal 93 of 2021) [2024] KEHC 9194 (KLR) (31 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9194 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL 93 OF 2021
SM GITHINJI, J
JULY 31, 2024

BETWEEN

RICHARD MAUTI APPELLANT

AND

JULIUS KINYAMAL RESPONDENT

*(An Appeal from the judgment and decree by Hon. S. K. Ngii (PM)
delivered at Mariakani on 14th April, 2021 in PMCC No. 53 of 2019)*

RULING

1. For determination is an application dated 6/9/2023 filed by the Respondent on 7/9/2023 under Sections 1A, 1B, and 3A of the [Civil Procedure Act](#) and Order 51 rule 1 of the [Civil Procedure Rules](#). The Respondent seeks the following orders: -
 - a. That this honourable court be pleased to make an order directing NCBA Bank- City Centre Nairobi through its branch manager to release the sum of Kshs. 1,216, 800 to the firm of Ernest Mogaka & Associates, which sums were jointly held as security pending disposal of the instant appeal in the account no. 5133770017 between Kimondo Gachoka & Co. Advocates and Ernest Mogaka & Associates.
 - b. That the costs of this application be awarded to the Applicant/respondent.
2. The grounds in support of the application as deposed in the supporting affidavit are that the decretal sum Kshs 1,216, 800 was ordered by this Court to be held in a joint account pending the hearing and determination of this appeal on 15/9/2021. The appeal was heard, determined and judgment delivered on 13/6/2023 dismissing the appeal. That the Appellant has refused to consent to the release of the money from the joint account to the decree holder despite demand to do so.
3. The Appellant was served with the application on 21/9/2023 as evidenced in the affidavit of service sworn on 3/11/2023 by Mr. Ernest Mokaya, counsel for the Respondent. Notably, he did not file any



response to the application. It is therefore unopposed. The application was also to be canvassed by way of written submission which were not filed as at the time of writing this ruling. I have nonetheless considered the application before me, the grounds and affidavit in support thereof.

4. It is explicit from the ruling of this court dated 15/9/2021, that the decretal sum Kshs. 1, 216, 800/- was to be deposited in a joint earning interest account pending the hearing and determination of this appeal. This appeal has been heard and determined and judgment delivered on 13/6/2023. The condition upon which the deposit of Kshs.1, 216, 800/- was made has been fulfilled and there is no justification to continue holding the same. I therefore find that the conditional stay of execution and the order directing the deposit of Kshs. 1, 216, 800/- in a joint account lapsed with the delivery of the judgment of this Court.
5. The upshot of the foregoing is that I hereby allow the Notice of Motion application dated 6/9/2023 and order that the amount of Kshs. 1, 216, 800/- plus the accrued interest thereon held in a joint account of Kimondo Gachoka & Company Advocates and Ernest Mogaka & Associates at NCBA Bank be released to the firm of Ernest Mogaka & Associates for onward transmission to the Respondent. The Appellant shall pay the costs of this application.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 31ST DAY OF JULY, 2024.

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S.M. GITHINJI

JUDGE

In the presence/absence of; -

1. Mr Mokaya for the Respondent
2. Mr Karisa holding brief for Mr Njuguna for the Applicant

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S.M. GITHINJI

JUDGE

31/7/2024

