



JOO (Suing Through JO his Father as the Next Friend and Guardian) & 2 others v Okutoyi & 2 others (Civil Case 25 of 2008) [2023] KEHC 21747 (KLR) (Civ) (24 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21747 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 25 OF 2008
AN ONGERI, J
AUGUST 24, 2023**

BETWEEN

**JOO (SUING THROUGH JO HIS FATHER AS THE NEXT FRIEND AND
GUARDIAN) 1ST PLAINTIFF
JOHN ONDEKO 2ND PLAINTIFF
MARGARET MUSIMBI ONDEKO 3RD PLAINTIFF**

AND

**PRAXEDES P MANDU OKUTOYI 1ST DEFENDANT
CHIMMY OMAMO OLENDE 2ND DEFENDANT
KENYA HOSPITAL ASSOCIATION 3RD DEFENDANT**

RULING

1. The application coming for consideration in this ruling is the notice of motion dated October 25, 2021 seeking for orders that the 1st defendant do reimburse the 3rd defendant kshs 1,035,567.85.
2. The application is based on the grounds that the 1st and 3rd defendants upon being found liable jointly and severally by court to pay plaintiff a sum of ksh 43,460,000 plus costs and interest, the plaintiff's bill of costs was taxed on May 8, 2020 at kshs 4,115,667.30.
3. Subsequently, the 3rd defendant's insurer by error remitted the sum of kshs 3,093,401.50 instead of 2,055,833.65 being half of the amount of the taxed bill. The 3rd defendant is now seeking reimbursement of ksh 1,035,567.85 being the difference between the amount remitted of ksh 3,093,401.50 and the amount the 3rd defendant was supposed to pay which was kshs 2,055,833.65.
4. The application is supported by the affidavit of Maxwell Maina the 3rd defendant's senior legal officer.



5. It is deponed in the supporting affidavit that upon entry of judgment in the sum of kshs 43,450,000 together with costs and interest, the 1st and 3rd defendants agreed to each pay half of the decretal sum.
6. Further that the bill of costs was taxed at ksh 4,115,667.30 and each was to pay ksh 2,055,833.65 but the 3rd defendant erroneously paid ksh 3,093,401.50 and the 3rd defendant is now seeking to recover the overpayment of kshs 1,035,567.85.
7. I have considered the submissions by the parties. The 3rd defendant submitted that on January 29, 2019 judgment was entered in favour of the plaintiff in the sum of ksh 46,531,080 against the 1st and 3rd defendants jointly and severally.
8. That on February 27, 2019, the 3rd defendant paid the plaintiff kshs 23,977,594 being half the decretal sum.
9. That on May 8, 2020, the costs were taxed at kshs.4,115,667.30 and the 3rd defendant remitted ksh 3,039,401.50 erroneously instead of kshs 2,057,833.65. That the 3rd defendant is now seeking the overpayment of ksh 1,035,567.85 from the 1st defendant.
10. The 3rd defendant relied on the definition given of the term jointly and severally in Jowitts legal dictionary as

“A liability imposed whether by statute, contract or otherwise, on two or more persons jointly and severally, in which case, again, each is liable severally and all are liable jointly”.
11. The 3rd defendant also relied on the following cases
 - a. Civil suit no 870 of 1998 *Dubai Electronics vs Total Kenya & 2 others*.
 - b. [*William Mukui Nyaga vs The A G & 2 others*](#) (203) eKLR.
12. The 1st defendant filed two replying affidavits sworn by the 1st defendant on March 11, 2022 and May 2, 2023 and also filed submission in which they said they paid their part of the claim to the plaintiff and that the 3rd defendant should seek reimbursement from the plaintiff.
13. The sole issue for determination in this ruling is whether the 1st defendant is liable to reimburse the 3rd defendant the overpayment of ksh 1,035,567.85.
14. I find that the 3rd defendant was not under an obligation to pay the decretal sum on behalf of the 1st defendant.
15. The 1st defendant said she had paid her part of the claim and I find that she did not request the 3rd defendant to pay on her behalf and neither was she aware of the overpayment.
16. The 3rd defendant should seek reimbursement from the plaintiffs.
17. I dismiss the application dated October 25, 2021 with no orders as to costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24TH DAY OF AUGUST, 2023.

.....
A. N. ONGERI

JUDGE

In the presence of:



..... for the Plaintiff
..... for the 1st Defendant
..... for the 2nd Defendant
..... for the Interested Party

