



**Nyale v Joseph (Civil Miscellaneous Application 43 of 2023)
[2023] KEHC 27240 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27240 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL MISCELLANEOUS APPLICATION 43 OF 2023
DKN MAGARE, J
DECEMBER 20, 2023**

BETWEEN

SAUMU KARUA NYALE APPLICANT

AND

TARUS JOSEPH RESPONDENT

JUDGMENT

1. This matter is a sad one. The Defendant is an Advocate of this Court. He has now closed his offices and left clients stranded. The Plaintiff sought the following Orders:
 - a. That Joseph Tarus t/a Tarus & Co. Advocates do forthwith render an Account of the Judgement sum obtained in Mariakani SPMCC No. 39 of 2019 Saumu Karua Nyae (suing as the Administrator and legal representative of the Estate of the Late Lukuni Nixon Hinzano-Deceased vrs Unigroup Transporters Limited.
 - b. That Joseph Tarus t/a Tarus & Co. Advocates do forthwith honour and remit the sum of Kshs. 974,820.00/= paid to them on behalf of the Applicant being the decretal sum in Mariakani SPMCC No. 39 of 2019 Saumu Karua Nyae (suing as the Administrator and legal representative of the Estate of the Late Lukuni Nixon Hinzano- Deceased vrs Unigroup Transporters Limited.
 - c. That Joseph Tarus t/a Tarus & Co. Advocates do forthwith honour and remit the decretal interest which was awarded from 11th May 2021 in Mariakani SPMCC No. 39 of 2019 Saumu Karua Nyae (suing as the Administrator and legal representative of the Estate of the Late Lukuni Nixon Hinzano- Deceased vrs Unigroup Transporters Limited.
 - d. That Joseph Tarus t/a Tarus & Co. Advocates do pay the costs and interest of this action.



2. The Plaintiff adopted and relied on 16th May 2023 in evidence. She stated that the Defendant consented to 70:30 liability without her consent. Unfortunately, I cannot review the judgment already delivered. Further, the Defendant had ostensible authority to record the consent. Without it being set aside, the Plaintiff must live with the award of Ksh. 974,820/-.
3. The Plaintiff attached 2 cheques showing payments of decretal sum. She also sought interest on the decretal sum. The Plaintiff has not however shown she paid legal fees. The Defendant did not defend the claim.
 - a. I find that the Plaintiff is entitled to the payment of a sum of Ksh. 974,820 together with interest from 1/8/2021 at court rates till payment in full. Interest is based on the fact that payment was made via a cheque dated 8/7/2021. Therefore, due allowance is given for dispatches of cheques and cheques clearing. The matter not having been defended, each party will bear own costs.

Determination

4. In the upshot, I make the following orders:
 - i. The Respondent is directed to forthwith honour and remit the sum of Kshs. 974,820.00/= paid to them on behalf of the Applicant being the decretal sum in Mariakani SPMCC No. 39 of 2019 Saumu Karua Nyae (suing as the Administrator and legal representative of the Estate of the Late Lukuni Nixon Hinzano- Deceased vrs Unigroup Transporters Limited.
 - ii. The above amount shall attract interest at court rates from 1/8/2021 till payment in full.
 - iii. There is no order as to costs.

DELIVERED, DATED and SIGNED at MOMBASA, Virtually on this 20th day of December, 2023. Judgment Delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Miss Musyoki for the Plaintiff

No appearance for the Respondent

Court Assistant - Brian

