



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

CIVIL APPEAL NO.11 OF 2020

BETWEEN

ICEA LION GENERAL INSURANCE COMPANY LTD.....APPELLANT

AND

MARY ANYANGO ODUNDO.....RESPONDENT

RULING

1. The respondent/applicant moved the court by way of Notice of Motion dated 7th July, 2021. It was brought under sections 1, 1A, 3 & 3A of the Civil Procedure Act. The applicant is seeking the following orders:

- a) That this application be certified as urgent and the service thereof be dispensed with at the first instance of its hearing.
- b) That the entire sum(s) of kshs.467,610.00 that was deposited in the joint fixed deposit account number 0401020161 in the names of Onyinkwa & Co. Advocates and Maube Muyeya and Associates at Mayfair Bank Limited, Eldoret Branch, be released forthwith and paid to the Respondent's advocates, Ms. Maube Muyeya and Associates, together with all interests accrued thereon.
- c) That the Branch/Operations Manager of Mayfair Bank Limited, Eldoret Branch do issue Ms. Maube Muyeya and Associates with a full and accurate statement of the said fixed deposit account, that is in the names of Onyinkwa & Company Associates and Maube Muyeya and Co. Advocates.
- d) The costs of and occasioned by this application be borne by the appellant.

2. The application was premised on the following grounds:

- a) That judgment in the primary suit, Oyugis PMCC No.63 of 2018; Mary Anyango Odundo–Vs- ICEA Lion General Insurance Company Limited was entered in favour of the Respondents on 30th January 2020.
- b) The appellant herein was dissatisfied with the said judgment and filed an appeal in Homa Bay High Court Civil Appeal NO12 of 2020; ICEA Lion General Insurance Company Limited –vs- Mary Anyango Odundo.
- c) That pursuant to a consent entered into between the Appellant and Respondent's advocates herein, the sum of kshs.467, 610.00 was deposited in a joint fixed deposit account in the names of Onyinkwa & Company Advocates and Maube Muyeya and Associates at Mayfair Bank Limited in Eldoret, as a precondition for the stay of execution pending the hearing and determination of this appeal.
- d) The said appeal was heard and dismissed with costs on 29th June 2021 by the Learned Honorable Justice Mr. Kiarie Waweru Kiarie at the High Court of Kenya in Homa Bay.
- e) Despite numerous notices and demands the appellant and or their advocates have failed, refused and or neglected the sum deposited in the joint fixed deposit account, thus necessitating this application.
- f) It is in the best interest of justice and fair play to grant the plaintiff/applicant the orders sought herein.

3. The respondent opposed the application on the following grounds:

- a) That the application herein is incompetent, unmerited self-defeating.
- b) That the applicant has failed to demonstrate that he shall suffer any substantial loss and damage if his application is not allowed.
- c) That the applicant has not furnished any security to cater for any sum that may be paid to him.
- d) That the financial means of the applicant are unknown and he has therefore failed to demonstrate that he can refund the decretal sum if the same is paid to him.
- e) That the intended appeal filed herein is an arguable appeal with overwhelming chances of success and the appeal may be rendered nugatory if the respondent's application for payment is allowed.
- f) That the affidavit in support of the application is shown by a stranger who is not party to the proceedings herein.

4. The order to deposit the kshs.467, 610.00 in the names of the advocates on record was to ensure the appeal was heard and determined. That appeal was determined on 29th June, 2021. The conditions for which the deposit was made have expired. This therefore made the appellants to apply for a stay of execution of the decree awaiting the intended appeal.

5. Since the appellant has filed a notice of appeal in the Court of Appeal, it is prudent to give them the chance to pursue their intended appeal. It would not therefore be in order to order the release of the deposit which is in an interest earning account. The only condition to add is that if the appellant does not file the record of appeal within 30 days from the date of the ruling, then the respondent be at liberty to commence execution.

6. Costs be in the cause.

DELIVERED AND SIGNED AT HOMA BAY THIS 28TH DAY OF FEBRUARY, 2022

KIARIE WAWERU KIARIE

JUDGE