



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS CIVIL APPLICATION NUMBER 384 OF 2011

RIFT VALLEY AGRICULTURAL

CONTRACTORS LIMITED (RVACL).....1ST APPLICANT/JUDGEMENT DEBTOR

BENSON THIRU KARANJA.....2ND APPLICANT/DIRECTOR/

SHAREHOLDER OF THE 1ST APPLICANT COMPANY

VERSUS

HARI GAKINYA T/A HARI GAKINYA &

CO. ADVOCATES.....1ST RESPONDENT/DECREE HOLDER

GILLETTE TRADERS.....2ND RESPONDENT/AUCTIONEERING FIRM

PHILIP MWAURA WACHIRA.....3RD RESPONDENT/AUCTIONEER

R U L I N G

1. Vide an Application dated 21st September, 2021 brought under **Article 50(2) (e) of the Constitution of Kenya, Order 45 & Order 51 of the Civil Procedure Rules, Sections 1A,1B,3,3A and 80 of the Civil Procedure Act Cap 21 Laws of Kenya**, the Applicants seek for the orders THAT:-

1. Spent;

2. Spent;

3. Spent;

4. The Honourable Court be and is hereby pleased to review Ruling dated 8th September 2021 as rendered by Hon. N. Makau Deputy Registrar under section 80 of the Civil Procedure Act as complimented by Order 45 of the Civil Procedure Rules on the ground of Error apparent on the face of the Record.

5. The costs of this Application be paid for by the 1st respondent/Decree Holder.

2. The Application is premised on the grounds on its face and supported by an Affidavit of **Badia A. Fiona** sworn on the even date. She deponed that pursuant to **order 2 a - e** of this Court's Ruling delivered on 26th February 2021, the 1st Applicant filed an inventory of payments it made to the 1st Respondent in this matter before the Deputy Registrar to aid in determining the amounts paid and balances if at all.

3. That the said inventory of payments vis a vis arithmetical workings thereto were duly served upon the respondents who did not dispute the same and the Deputy Registrar via a Ruling dated 8th September 2021 erroneously found that the 1st Applicant owed the 1st respondent a sum of Kshs.117, 373.56/= with a rider that interests are still rising.

4. She deposed that there is grave error apparent on the face of the said Ruling since at page one the Deputy Registrar wrongfully noted that only a sum of Kshs.180,000/= had been paid to the 1st respondent on 1st December, 2009.

5. That the proper position is that the 1st applicant paid the 1st respondent Kshs.180,000/= as supported by the receipt dated 1st December, 2009 and Ruling rendered by Hon. Emukule on 10th October 2014 and Kshs.743,907/= as supported by Bankers Cheque dated 19th February 2020 of serial number 238813 that was received by the 1st respondent on 27th February 2020.

6. She averred that the 2nd error apparent on the face of the record are the arithmetical workings by Hon. Makau in that instead of subtracting the sum of Kshs.180, 000/= which had been paid on 1st December 2009 from the decretal sum of Kshs.209,418/= she charged interest at the sum of Kshs.209, 418/= and after arriving at a total figure of Kshs.297,373.56/= now subtracted the Kshs.180, 000/= yet the interest at 14 % per annum was to start running as from 1st February 2018.

7. She deposed that on 1st December 2009 the 1st applicant had paid the 1st respondent a sum of Kshs. 180,000/= and as such with the decretal amount being adjudged at Kshs. 209,418/= the balance on principle would be Kshs.29,418 i.e. (Principal; 209,418.00/= - 180000.00/= = Kshs. 29,418.00/=)

8. That interests on Kshs. 29,418.00/= would therefore run from 1st February 2018 to 27th February 2020 when the full amount was duly paid to the 1st respondent/decreed holder as demonstrated hereunder;

COMPUTATION OF DAYS FOR PURPOSES OF INTERESTS;

1st February 2018-27th February 2020

2018; 334 Days

2019; 365 Days

2020; 58 Days

Total Days - 757

Interests on a sum of Kshs.29, 418.00/= For 757 Days

(29418 X 0.14/365 X 757)= 8,541.70

Interest Payable As At 27th February 2020; Ksh.8,541.70/=

Principle (29,418.00) + Interests (8,541.70) = 37,959.70/=

9. That the above balance of Kshs.37,959.70/= was duly settled via the Bankers Cheque dated 19th February, 2020 of Kshs.743, 907.00/= and as such it was grave injustice for the Deputy Registrar through ruling dated 8th September 2021 to make a highly erroneous facts and arithmetical workings that a sum of Kshs.117,373.56/= was pending payments with rising interests.

10. She contended that as at 27th February 2020 the principal amount plus the interests had been fully settled by the 1st Applicant and prayed that this application be heard expeditiously before the 1st respondent proceeds with execution.

11. Mr. Gakinya told the court that he would rely on the Affidavit sworn before Hon. Makau and Hon Makau's Ruling. Hence he did not file any submissions.

12. The only issue for determination is whether the orders sought can be granted.

ANALYSIS AND DETERMINATION

13. **Section 80 of the Civil Procedure Act is on Review. It provides that:-**

Any person who considers himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

14. **Order 45(1) of the Civil Procedure Rules** sets out the requirements that have to be met before a review is granted as follows:

“Any person considering himself aggrieved

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

b) by a decree or order from which no appeal is hereby allowed and who from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed, or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgment to the court which passed the decree or made the order without unreasonable delay”.

15. *From the foregoing it is evident that the orders I am being asked to REVIEW were made by the Deputy Registrar.*

16. *These are mathematical errors which ought to have been brought to the attention of the Deputy Registrar for her corrections.*

17. *To that end this file is returned to the Deputy Registrar to give a date upon which counsel can address her on the arithmetic's of these calculations so that the right additions can be made.*

18. *Each party to bear its own costs.*

19. *Orders accordingly.*

Dated, Signed and Delivered virtually this 31st day of March, 2022.

Mumbua T Matheka

Judge

In the presence of:

Court Assistant Edna

Badia & Co Advocates

Hari Gakinya & Co Advocates