



**Total Kenya Limited v Dakawou Transport Limited (Civil Appeal
276 of 2012) [2022] KEHC 11614 (KLR) (Civ) (4 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11614 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 276 OF 2012

JK SERGON, J

AUGUST 4, 2022

BETWEEN

TOTAL KENYA LIMITED APPELLANT

AND

DAKAWOU TRANSPORT LIMITED RESPONDENT

RULING

1. Dakawou Transporter Ltd, the respondent herein took out the motion dated 18th May, 2022 whereof it sought for the following orders:
 - i. That the honourable court be pleased to set aside the Order No. 3 “THAT the sum of monies held in CFC Stanbic Limited Kenya under account name Walker Kontos/J. Maluki and Co. Adv. Account number xxxx be transferred to the respondent’s advocates account in National Bank of Kenya (Ammanah), name Bashir and Noor company, Account Number xxxx Bank Branch Kenyatta Avenue” issued on 6th October 2021 pursuant to the amended notice of motion application dated 22nd July 2021.
 - ii. That the honourable court be pleased to grant leave to the applicant to further amend the amended notice of motion application dated the 22nd of July 2021.
 - iii. That the draft amended notice of motion application dated 18th May 2022 be deemed as filed.
 - iv. That the honorable court be pleased to grant any further orders that it deems just and appropriate tin the circumstances.



2. The respondent/applicant filed the affidavit sworn by Sumayyah Mokku in support of the aforesaid motion. The application was served but it never elicited any response therefore the same proceeded for hearing exparte.
3. I have considered the grounds stated on the motion and the facts deponed in the supporting affidavit. It is the submission of the respondent/applicant that the applicant's Amended Notice of Motion dated 22/7/2021 was allowed as unopposed 27th September 2021.
4. It is pointed out by the applicant that when the order was extracted, it was noted that a typographical error was apparent which was carried on from the amended motion. It is pointed out that prayer 3 that was introduced to the motion application dated 18th March 2021 after leave to amend was granted indicated in part that the "sum of monies held in CFC Stanbic Limited" as opposed to "the sum of monies held in NIC bank Ltd."
5. It is said that the error was inadvertent and that it has substantially affected and frustrated the attempts of the respondent/applicant to access the monies held in the joint account in issue being the decretal sum in C.M.C.C. no 14079 of 2005 Dakawou Transport Ltd =vs= Total Kenya Ltd.
6. It is further stated by the applicant that to further amend the amended motion dated 22/7/2021 by rectifying the bank name from "CFC Stanbic (K) Ltd to NIC Bank Ltd" will allow the respondent/applicant to access the decretal amount which it is entitled to by virtue of being a successful litigant in the suit before the trial court.
7. Having considered the applicant's arguments and having noted that the appellant/respondent did not file any response, I am convinced that the motion has merit. The same is allowed as prayed but with each party bearing its own costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
4TH DAY OF AUGUST, 2022.**

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant/Applicant

..... for the Respondent

