



**Sihuan Huashi Enterprises Corporation East Africa Limited v Landmark
Real Estate Investment Trust Limited (Civil Suit 381 of 2015)
[2022] KEHC 14646 (KLR) (Commercial and Tax) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14646 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 381 OF 2015
EC MWITA, J
OCTOBER 28, 2022**

BETWEEN

**SIHUAN HUASHI ENTERPRISES CORPORATION EAST AFRICA
LIMITED APPLICANT**

AND

LANDMARK REAL ESTATE INVESTMENT TRUST LIMITED RESPONDENT

RULING

1. The applicant, Sihuan Huash Enterprises Corporation Limited (Sihuan), took out a motion on notice dated November 16, 2021 seeking release of the funds held in a joint fixed deposit account in the joint names of advocates for the parties in account No xxxx, inclusive of interest so far earned.
2. The gist of the application is that by an order of this court (Sewe J) dated October 2, 2015, the disputed amount of Kshs 15,081,493 was to be deposited into a joint interest earning account in the names of Messrs Oraro & Company Advocates and Miyare & Company Advocates with Standard Chartered Bank Ltd, pending the hearing and determination of the suit. That order was on October 9, 2015 varied by consent to the effect that the amount was to be deposited with CFC Stanbic Bank Limited, which was done.
3. The suit was finally determined in favour of the applicant on October 5, 2021. In that judgment the court declared that the respondent, Landmark Real Estate Investment Trust Limited (Landmark), was not entitled to the amount in dispute that had been secured by a bond guarantee in Standard Chartered Bank limited. Landmark was also barred from calling for release of that money.
4. Sihuan argues that following determination of the suit, they requested Landmark's advocate to release the money but they have declined, necessitating this application.



5. Landmark has resisted this application through a replying affidavit sworn by Kenneth Omolo on June 30, 2022. Landmark admits that the money was deposited in a joint interest earning account and that the suit was indeed determined in favour of Sihuan. Landmark's take, however, is that they have filed a notice of appeal and intend to appeal against that judgment. Landmark argues that since the money forms the substratum of the intended appeal, it is intended to secure the status quo pending resolution of the dispute.
6. Landmark takes the view, that if the money is released before the intended appeal is determined, it will be used or wasted. But preservation of the money in that account will ensure that interest continues to accrue for the benefit of both parties, pending determination of the intended appeal.
7. I have considered the application and response thereto. I have also read submissions by parties and the decisions cited. The order to deposit the money in a joint interest account was intended to protect the money until determination of the suit.
8. Both parties agree that the suit was finally determined in favour of Sihuan, and that Sihuan sought to have the money released but counsel for Landmark declined. The reason for declining to release the money was that they intend to appeal against the judgment and have taken steps to that end by lodging a notice of appeal.
9. I have perused the order directing that the money be deposited in a joint interest earning account. The money was to remain in that account pending determination of the suit. There was no further order that the money remain in the account until determination of any other proceedings or dispute such as any intended appeal.
10. The suit having been determined and the order served its purpose, Landmark's advocates could not continue holding the money pending occurrence of any other event outside the terms of the order, the basis on which the account was opened and the money deposited. In other words, there is no legal basis for continued holding of the money given that the suit was concluded and the owner of the money determined. In the circumstances, I find that Landmark's advocates are acting contrary to the tenor and purport of the order.
11. For the above reasons, I am satisfied that the application is merited and is for allowing. Consequently, the application dated November 16, 2021 is allowed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER 2022

E C MWITA

JUDGE

