



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 290 OF 2011

EMMY CHEPKEMBOI BUNEL.....PLAINTIFF/RESPONDENT

VERSUS

CHRISTINE WANGARI MUNGA.....1ST DEFENDANT/APPLICANT

DAVID MWAURA.....2ND DEFENDANT/APPLICANT

RULING

1. The subject matter of this ruling is the Notice of Motion dated 15th August 2016 taken out by the defendants/applicants in which they are seeking for the following orders *inter alia*:

i. Spent

ii. That the sum of Kshs.1,500,000/= together with all accrued interest/profits thereon held in Chase Bank Kenya Limited in a joint interest earning account No.001xxxxxxxxxx in the names of Michael Daud & Associates and Mitey & Associated be released to the Defendants/applicants herein through their Advocates Michael, Daud & Associates forthwith.

iii. The costs of this Application be provided for.

2. The application is based on the grounds set out on the motion and is supported by the affidavit sworn by Isaac Wanjohi. The deponent of the supporting affidavit averred that this suit was determined by a Ruling delivered on 3rd May 2012 by the Late Lady Justice Khaminwa where summary judgment was entered in favour of the Defendants with the Plaintiff's Plaint being struck out.

3. He avers that the Plaintiff being dissatisfied with the Court's judgment, filed a Notice of Appeal dated 9th May 2012 together with an application for stay of execution of the Orders issued on 4th May 2012 pending the hearing of the intended Appeal.

4. He deponed that the parties agreed by consent with the Plaintiff to deposit a sum of Kshs.1,500,000/= in an interest earning account in the names of the Advocates for respective parties as security for Stay of the Order of 4th May 2012 pending the hearing and determination of the Appeal and that the successful litigant in the appeal will be entitled to the sum deposited.

5. He further deponed that the Plaintiffs failed to take steps in prosecuting the Appeal and accordingly the defendants lodged an application in the Court of Appeal seeking orders for the Notice of Appeal to be struck out as the Appellant had failed to institute the Appeal within the appointed time as prescribed by the Court of Appeal Rules.

6. A ruling was delivered on 28th March 2015 wherein the Court of Appeal struck out the Plaintiff/Appellant's Notice of Appeal with costs and to the effect of the same was that the suit had therefore been heard and finalized as such the monies held in the joint account ought to be released to the Defendants.

7. He avers that they have on several occasion written to the Plaintiff's Advocates requesting for their consent to have the funds released to them but the Plaintiff's advocate have totally failed or refused to do so.

8. The Plaintiff/Respondent has never responded to this application and therefore it should be treated as unopposed.

9. Indeed, the Defendants/Respondents have a right to the fruits of the judgment delivered. In light of the above, this court finds no reason not to allow this application and therefore I make the following orders;

i. An order is made for the release the sum of Kshs.1,500,000/= together with all the accrued interest/profits thereon held in Chase Bank Kenya Limited in a joint interest earning account No.001xxxxxxxxxx in the name of Michael Daud & Associates and Mitey & Associated to the Defendants/applicants herein through their Advocates Michael, Daud & Associates forwith.

ii. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 30TH DAY OF DECEMBER, 2021.

.....

J. K. SERGON

JUDGE

IN THE PRESENCE OF:

..... **FOR THE PLAINTIFF/RESPONDENT**

..... **FOR THE 1ST DEFENDANT/APPLICANT**

..... **FOR THE 2ND DEFENDANT/APPLICANT**