



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 187 OF 2015

NZIOKA & CO. ADVOCATES.....PLAINTIFF

-VERSUS-

HARIT SHETH ADVOCATES.....DEFENDANT

AND

BRYAN SAMUEL YONGO OTUMBA.....INTERESTED PARTY

RULING

- 1) Bryan Yongo Otumba, the Interested Party herein took out the motion dated 18th May 2021 whereof he sought to be allowed to execute and attach the defendant and recover a sum of ksh.10,650,000/=. The Interested party also sought for costs of the application. The motion is supported by the affidavit sworn and filed by the Interested Party.
- 2) When served, the defendant filed the replying affidavit sworn by Richard Kariuki to oppose the application. Parties recorded a consent order to have the motion disposed of by written submissions.
- 3) I have considered the grounds stated on the motion and the facts deponed in the rival affidavits. I have further considered the rival written submissions plus the authorities cited by the parties.
- 4) It is the submission of the Interested party that he was enjoined as an Interested party in this suit by consent recorded on 4th May 2016. The Interested party further stated that the consent order gave schedules of payments to be made to him by the defendant from the decretal sum the defendant receives in H.C.C.C no. 617 of 2012. The Interested party stated that the defendant was paid ksh.600,000,000/=. The Interested party averred that the defendant has partially paid him from it has so far received from the Government leaving a balance of ksh.10,650,000/= which amount is due and payable.
- 5) The applicant urged this court to grant him the order to enable him enforce by attachment to recover the aforesaid amount arguing that the defendant has no reason to further withhold the amount.
- 6) In response, the defendant urged this court to dismiss the Interested party's application stating that the same lacks merit. The defendant admitted having received the sum of ksh.600,000,000/= but argued that the same was not the final instalment of the decretal amount in H.C.C.C no. 617 of 2012. The defendant further stated that it made the payments required to be made under paragraph 2(a) of the consent order.
- 7) The defendant also argued that since it has not received the final instalment of the decretal sum in H.C.C.C no. 617 of 2012 from the Government, it is not obliged to pay the final installment payable under paragraph 2(b) (iii) of the consent order to the Interested party.
- 8) The defendant further stated that it has in any event duly paid to the Interested party all sums payable by the defendant to the Interested party under the consent order and that the Interested party has duly discharged the defendant from any and all liability to him under the consent order. The defendant pointed out that the Interested party has by his letter dated 18th May 2016 discharged the defendant from any liability.
- 9) There is no dispute that the Interested party is seeking for an order to enforce by execution against the defendant to recover a sum of ksh.10,650,000/=. The defendant has averred that the Interested party has fully been paid and that the interested party gave a letter of discharge to the defendant. The Interested party has admitted authoring the letter of discharge dated 18th May 2016. He however claims that he was duped by the defendant to write such a letter.

10) The Interested party has not stated how he was duped by the defendant. In the absence of credible evidence to prove how he was duped by the defendant to issue the letter of discharge, I find that the defendant has satisfactorily established that the Interested party willingly authored the letter dated 18th May 2016 discharging the defendant from further liability to the Interested party.

11) It is clear from the language of the Interested party's letter dated 18th May 2016 that the Interested party irrevocably discharged the defendant from any liability under the undertakings made to the plaintiff (Nzioka & Co. Advocates) dated 29th March 2013 and 5th April 2013.

12) In the end, I find the Interested party's motion dated 18th May 2021 to be without merit. The same is dismissed with each party bearing their 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 Defendants/Applicants