

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 574 OF 2017

LAVINGTON SECURITY LTD.....APPELLANT/APPLICANT

VERSUS

FLORA KAMENE KAVOI.....RESPONDENT

(Being an appeal from part of the Judgment of Hon. Senior Principal Magistrate Mr. D. W. Mburu delivered on the 28th of October, 2016 in CMCC No. 1795 of 2015)

RULING

This ruling relates to the application dated the 6th day of June, 2019, brought by the Appellant/Applicant under Orders 51 Rule (1), 42 Rule 32 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act. The order sought by the applicant is for release of kshs. 402,265/- being the decretal sum deposited in court.

It is based on the grounds set out on the body of the same and it's supported by the annexed affidavit sworn by Raymond Koech, on 6th day of June, 2019.

The application is not opposed by the respondent and when it came up in court on 17th June, 2019, they did not attend court though they had been served.

The deponent states that the appellant deposited in court a sum of Kshs. 402, 265/- being the decretal sum pursuant to a court order. He has annexed a copy of the deposit slip marked as exhibit "RK"

That the appeal was heard and determined and the same was allowed and the lower court suit dismissed. He has sought for the refund of that money to the Appellant/Applicant.

The court has considered the application together with the supporting affidavit. The Appellant states that it deposited the aforesaid sum in court as a condition for stay pending the hearing and determination of the appeal. I have perused the record of the proceedings and I can confirm that the appeal was heard and determined on the 3rd day of April, 2019. There is no evidence that the responded intends to challenge that judgment in any way and even if there was, the amount sought to be released was deposited as security pending the hearing and determination of the appeal filed herein which has been finalized. The applicant has annexed a deposit slip as evidence that the money was deposited in court

In the premises aforesaid, I see no reason why the decretal sum should not be released to the appellant. I allow the application dated the 6th day of June 2019 but with no orders as to costs.

Dated, Signed and Delivered at Nairobi this 19TH Day of JUNE, 2019.

.....

L. NJUGUNA

JUDGE

In the Presence of

..... For the Applicant

..... For the Respondent