



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**HIGH COURT CIVIL CAUSE NO. 65 OF 2014**

**MARGARET MBUA.....APPLICAN**

**VERSUS**

**JAMES KAMAU MBUA.....RESPONDENT**

**JUDGMENT**

1. The Application coming for consideration in this Ruling is the Notice of Motion dated 14.10.2019 brought under Section 34 (1) of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules 2010 seeking the following Orders:

**(i) This Notice of Motion be certified as urgent and be heard ex parte, and service thereof on the Plaintiff/Respondent be dispensed with in the first instance owing to its urgency.**

**(ii) The joint account in the name of M/s. JUDY THONGORI & CO. ADVOCATES & M/S HARRISON KINYANJUI & CO. ADVOCATES opened with Standard Chartered Bank Ltd, Kenyatta Avenue Branch in furtherance of the Order of this Honourable Court be forthwith closed, and the monies held therein constituting of interest accruing from principal sum of Ksh.103,625,000/- hitherto held in the said account, be forthwith released to and shared in the proportion ordered in the Judgment of this Court made on 20<sup>th</sup> December 2018, being 80% thereof in favour of JAMES KAMAU MBUA and 20% thereof in favour of MARGARET NJUMBI MBUA.**

**(iii) The Costs of this Motion be awarded to the Applicant herein.**

2. The Application is supported by the Affidavit of the Applicant of even date in which he has deposed that he is now a senior citizen and the Respondent is keeping him from getting his share of 80% of the sums held in the above stated account.

3. The Applicant also deposed that the Principal sum was shared at 20:80 but the Respondent now wants a larger share of the interest.

4. The Respondent filed a Replying Affidavit dated 23.10.2019 in which she deposed that the proceeds realized from the sale of LR No. 5989/200 was Ksh.275,000,000 and she got 55,000,000 which is 20% of Ksh.275,000,000 and the Applicant got the balance after deduction of the 55,000,000 which amounted to 48,000,000.

5. The Respondent is now demanding 20% of Ksh.55, 000,000 and she said the Applicant is entitled to interest for the amount of Ksh.48, 000,000 released to him.

6. This Court apportioned contribution to the acquisition of the Matrimonial properties at 20:80% in favour of the Applicant who got 80% while the Respondent was given 20%.

7. I find that's the said interest which is about 20,000,000 should also be shared at the ratio of 20:80%

8. It is not clear why the Respondent is seeking a figure higher than 20%.

9. The interest was not earned from a figure of Ksh.275,000,000 but from the 103,000,000 which was deposited on the joint account.

10. The said interest should be shared at the ration of 20:80%. The Applicant should get 80% share while the Respondent is entitled to a 20% share.

11. To rule otherwise would be changing the ratio apportioned during the of delivery of Judgment.

12. The Application dated 14.10.2019 be and is hereby allowed in the following terms;

**(i) THAT the interest accruing from the proceeds of sale of LR NO. 5989/200 be shared at the ratio of 20:80% between the Parties.**

**(ii) THAT the Applicant is entitled to 80% while the Respondent's share is 20%.**

**(iii) THAT to rule otherwise would be tantamount to changing the Judgment delivered on 20.12.2018.**

**(iv) THAT each party to bear its own costs of this Application.**

**(v) THAT the Respondent is granted 28 days leave to appeal from the said order.**

**DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**