

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 286 OF 2010

NAMPAK KENYA LIMITED.....APPELLANT

VERSUS

PAUL MURUGA WACHIRA.....RESPONDENT

RULING

On 25th May 2017 Serгон J delivered a judgment wherein he allowed the appeal, dismissed the objection on jurisdiction and substituted it with an order striking out of the suit and awarded costs of the appeal and the suit to the appellant.

There is now an application before me dated 15th June, 2017 under order 51 Rule 1 of the Civil Procedure Rules and Sections 1A and 1B of the Civil Procedure Act, seeking an order that the security sum of Kshs. 700,000/= deposited in court for and on behalf of the appellant be released to his advocates. This order is based on the fact that the appeal was allowed and therefore no security is required any more.

There is a supporting affidavit sworn by the advocate for the appellant. The respondent filed a replying affidavit stating that he was aggrieved by the said judgment and has sufficient grounds for review of the same. Further, the release of the security is not ripe before exhausting his remedy of review. In any case no prejudice will be occasioned to the appellant if the release is held in abeyance.

The replying affidavit was filed on 25th July, 2017. As early as 26th July, 2017 the respondent indicated that he wished to file an application for review. Eight months down the line, no such application has been lodged. Litigation must come to an end.

The application for release of security is well merited. It is granted as prayed. The release of the funds deposited in court in the name of the advocate for the appellant on 7th August, 2013 shall be released to the said advocate within 14 days from the date of this ruling. In effect this application is allowed and the appellant shall have the costs of the application.

Orders accordingly.

Dated, signed and delivered at Nairobi this 20th Day of March, 2018.

A. MBOGHOLI MSAGHA

JUDGE