



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO. 640 OF 2004

RATILAL GOVA SUMARIA.....PLAINTIFF

-VERSUS-

FINA BANK LTD.....1ST DEFENDANT

JOSEPH M. GIKONYO T/A GARAM

INVESTMENT AUCTIONEERS.....2ND DEFENDANT

H.M. MANEK.....3RD DEFENDANT

RULING

1. On **16th December, 2014**, parties in this matter recorded a consent before court, the effect of which was to have this suit marked as settled with costs to the defendant.
2. The 3rd defendants costs were taxed at **ksh 481,766** by the ruling of the Deputy Registrar, the taxing master, dated **8th July 2005**.
3. The plaintiff moved the court for stay of execution of those costs by chamber summons dated **4th April 2006**. The plaintiff obtained stay of execution for those costs as sought by that application but on condition that the plaintiff did deposit into court **ksh 100,000** within 7 days from the **4th April 2006**. On **7th April 2006**, the plaintiff deposited **ksh 100,000** in this court and was issued with a receipt no. **B398543**.
4. The 3rd defendant by a notice of motion dated **13th February 2018**, seeks orders for the stay of execution granted on **4th April 2006** to be set aside and for the release of **Ksh 100,000** to him.
5. Although the application was served on the plaintiff's learned advocated **T.O. Kopere & Co. Advocates**, the said advocate and the plaintiff did not attend court on **18th July 2018** when the application was heard. The plaintiff did not also file any document in opposition to the application.
6. The application is merited. The 3rd defendant's costs were taxed but the stay of execution granted on **4th April 2006** has prevented the 3rd defendant from recovering those costs.
7. Accordingly I grant the following orders:
 - a. *The amount deposited in this court by the plaintiff on 7th April 2006 under receipt no. B398543 in this file shall be released to the 3rd defendant forthwith.*
 - b. *The stay of execution granted on 4th April 2006 to the plaintiff is hereby set aside and vacated.*
 - c. *The defendant is awarded the costs of the notice of motion dated 13th February 2018.*

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of **October, 2018**.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

.....for the Plaintiff

.....for the Defendants

MARY KASANGO

JUDGE