



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 120 OF 2016

PETER NJAU MERITA

JUSTER KANINI MANENE (Legal & personal representatives of the estate of

LUCAN MUGO MERITA.....PLAINTIFFS

- V E R S U S -

KENINDIA ASSURANCE CO. LIMITED.....DEFENDANT

RULING

1) On 19th October 2018, this court delivered its ruling in which it allowed the plaintiffs' motion dated 8th December 2016. This matter was listed for mention for directions before this court on 11.12.2018. On the aforesaid Mr. Masese learned advocate for the plaintiffs beseeched this court to make a clarification on the ruling delivered on 19.10.2018. It is Mr. Masese's submission that he is unable to extract and execute the order because the ruling appeared ambiguous.

2) I have carefully perused the aforesaid ruling. It is apparent that in the motion dated 8th December 2016 the plaintiffs had sought for the following orders:

i. THAT the defendant's statement of defence herein dated 6th May 2016 filed in this honourable court on 9th May 2016 be struck out with costs.

ii. THAT judgment be entered for the plaintiff/applicant against the defendant as prayed in the plaint dated 19th April 2016.

iii. THAT costs of this suit and this application be provided for.

3) This court in its ruling expressly stated that the defendant's defence had no triable issues and proceeded to strike it out. This court also appreciated the fact that the plaintiffs had sought for two main prayers namely: **First** is for an order striking out the defence and **secondly** an order for entry of judgment as prayed in the plaint.

4) This court expressly issued an order striking out the defendant's defence but did not express itself over the second prayer. It was an accidental slip. Consequently in exercise of this court's discretion under Section 99 and 100 of the Civil Procedure Act, I grant the second prayer.

5) It is important to clarify and clear any doubt by expressly stating that the allowance of the motion dated 8/12/2016 gave rise to the following orders:

i. The defendant's defence dated 6.5.2016 was struck out.

ii. Judgment is entered in favour of the plaintiff and against the defendant as prayed in the plaint dated 14.4.2016 that is to say:

a) An order of declaration that the defendant is bound to pay the plaintiff the decretal amount with interest plus costs in Nairobi H.C.C.C no. 419 of 2011,

b) Costs of the suit

6) The plaintiff to have costs of this suit.

Dated, Signed and Delivered in open court this 20th day of December, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant