

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 183 OF 2012

DANIEL MUSAU KIMEU.....APPELLANT

- V E R S U S -

JOHN MALOLI KITUKU RESPONDENT

RULING

1. Pursuant to the motion dated 11/4/2012, this court issued an order for stay of execution of the decree pending appeal on condition that the decretal sum of ksh.398,792/= is deposited in court. The aforesaid was eventually deposited in court by the appellant's advocate on 13th July 2012. This appeal was heard and determined in favour of the appellant on 29.9.2016. The appellant successfully applied for the aforesaid deposit to be released to him on 29.11.2016 pursuant to the motion dated 31.10.2016. The appellant is now before this court seeking of the order to be reviewed so that the aforesaid amount should be released to the appellant's advocate instead of the appellant vide the motion dated 8th February, 2017. The aforesaid motion was served and there was response nor attendance on the part of the respondent hence the motion proceeded to hearing exparte.

2. I have considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit. The motion is supported by the affidavit of Mercy Nyabenge.

3. It is the appellant's submission that a mistake was made in drafting the application which sought for the amount deposited in court as security for the due performance of the decree to be released to the appellant instead of the appellant's advocate. It said that the aforesaid amount was paid by the appellant's insurers and not the appellant.

4. The aforesaid averments have not been controverted. I have also no reason to doubt the veracity of those averments. Consequently, I find the motion dated 8th February 2017 to be well founded. It is allowed as prayed with no order as to costs.

Dated, Signed and Delivered in open court this 10th day of April, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent