



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO. 21 OF 1997

AHMED FARAH RAGEH.....PLAINTIFF/APPLICANT

-VERSUS-

MARIAM AMIN.....1ST DEFENDANT/RESPONDENT

STANDARD CHARTERED BANK (K) LTD.....2ND DEFENDANT

RULING

Review

[1] Before me is a Notice of Motion Application dated 24th October 2016, in which the Applicant seeks the following orders:

- 1. This application be heard on priority basis as the same has pended before court for over 19 years.***
- 2. The Hon Court do review the judgment dated 24th June 2016 as there is an error apparent on the face of the record***
- 3. The Hon Court do make such further orders as may meet the ends of justice in this matter.***
- 4. Costs of this application be provided for.***

[2] The basis of the application before me is paragraph 38 of the judgment delivered on 24th June 2016 which read as follows:

“The defendants are jointly and severally liable to repay Kshs 554,360 to the plaintiff plus interest at court rates from 13th December 1995 till 18th November 2002 as the 2nd defendant deposited Kshs 550,860 which was released to both counsel to be held in interest earning account in the names of M/S Mwangi E.G & Company Advocates and M/S J. Mbaya. The said Kshs 550,860 be released to the plaintiff’s counsel after expiry of 30 days from the date of this judgment. The difference of unpaid Kshs 2,860 shall continue to earn interest from 13th December 1995 till payment in full at court rates.”

[3] The specific portion thereof in contention is the line that reads:-

“...as the 2nd defendant deposited Kshs 550,860 which was released to both counsel to be held in interest earning account in the names of M/S Mwangi E.G & Company Advocates and M/S J. Mbaya.

M/S MWANGI stated that the above statement was not factually correct as the court did not release the said amount to the two counsels despite presenting the court order to it. And according to her, there is an error in the judgment= an error she called an honest mistake. She therefore urged the court to review the said part and enter judgment in the sum of Kshs. 554,360 plus interest and costs at court rates from 10/12/1995 to the date of payment.

[4] The Respondent opposed that Application via Replying Affidavit filed in court 15th March 2017 where it was deposed inter alia that the Applicant had not provided sufficient facts or evidence to enable the court grant the orders sought and that the Applicant was guilty of inordinate and unreasonable delay. To them, the Notice of Motion was misconceived, bad in law and incurably defective.

DETERMINATION

[5] I have carefully considered this Application and the rival contentions by the parties. The quarrel here is that Kshs. 550,860 stated to have been released to counsels for depositing in an interest earning account of both counsels was not released as ordered. Therefore, that part of the judgment to the effect that the said sum had been released for purposes of being deposited in interest earning account in the names of both counsels is not factually correct and that constitutes an error in the judgment which should be corrected. M/S Mwangi proposes that it be cured by entering judgment in the sum of Kshs. 554,360 plus interest and costs at court rates from 10/12/1995 to the date of payment. I appreciate the argument by M/S Mwangi. First, the money is still with the court. Second, I doubt whether such sums as are deposited in court would earn interest. Third, such moneys may be subjected to court collection fees. As a matter of good practice, such money should be deposited in the first instance in a joint interest earning account in the names of both counsels. In that manner, the deposit is invested and will earn interest such that whoever is ultimately entitled to the money takes it with interest. This practice has developed within the money-laundering jurisprudence and helps in obviating liability against asset recovery agencies for lost investment opportunities and interest in unsuccessful asset recovery or forfeiture proceedings. Upon this realization, the court upon consent of the parties ordered the money to be released to be invested in an interest earning account in the names of both counsels. But that never happened. The court in its judgment presumed that its order had been complied with and the money in question was in an interest earning account as had been ordered. Consequently, it made orders on the said sum and this affected court's decision on interest payable on the said sum of money. At this juncture I must admit that the facts of this application present a kind of squirm. But one thing is clear; that, in entering judgment, the court relied on mistaken belief- albeit honest- that the money was in a joint interest earning account. And clearly there is an apparent but honest mistake. I am aware that the money is still available and may be released to the plaintiff. But, the question of interest still abounds. Doubtless, the said sum of money was deposited as a condition for stay of execution which was granted by court on 11.11.2002. Thus, one cannot fail to ask; whose money is this? These are profound matters, and given the type of correction required, I am of a considered opinion that Makau J should be best suited to give the ultimate decision on the matter. I am aware that he is not in this station, but as I have stated, the depth of the correction sought warrants the good judge to consider these matters. Therefore, this file shall be remitted immediately to Makau J to consider the request for review of his judgment. I reckon that this matter is quite old and should be brought to closure sooner rather than later. It is so ordered.

Dated, signed and delivered in open court at Meru this 23rd day of October 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Munene for M/s. Mwangi advocate for plaintiff/applicant

Mr. Igwete advocate for Mbayu advocate for 2nd defendant

F. GIKONYO

JUDGE