

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 160 OF 2000

ROY PARCEL SERVICES LIMITED..... APPELLANT

VERSUS

EXPRESS KENYA LIMITED..... RESPONDENT

RULING

The application before the court for determination is the Notice of Motion dated the 22nd August, 2017 seeking orders that; the decretal sum deposited with the court on the 8th day of November, 2000 vide bankers cheque number 398156 be released to the applicant/Respondent express Kenya Limited and that the costs of the application be provided for.

It is premised on the grounds set out on the body of the same and it's supported by the annexed affidavit of Clare Nyabuti sworn on the 22nd August, 2017.

It is deponed that on the 21st March 2000, Judgment was entered in the sum of ksh. 157,567/= together with costs and interest in RMcc No. 1761 of 1990. The Appellant lodged an Appeal on the 5th April, 2000 and obtained an order staying execution, on condition that the decretal sum plus costs is deposited in court.

That by a banker's cheque number 398156 of ksh 183, 510/10 dated 8th November, 2000, the decretal sum was deposited in court pending the hearing and determination of the Appeal. The Appeal was dismissed on the 22nd March 2010 following an application to dismiss the Appeal for want of prosecution which was filed on the 23rd February 2004. Since then, there has not been an application for review of the order dismissing the Appeal and no Appeal has been preferred against the said order.

The Applicant has urged the court to order for the release of the funds.

The Application proceeded exparte as the Respondent did not file a response to the same or even attend court during the hearing.

The court has considered the application and the submissions by the Counsel for the Applicant. I have perused the court record and its true that the Appeal was dismissed on the 22nd March, 2010 for non attendance and since then no other action has been taken in the matter. The decretal sum sought to be released was deposited pending the hearing and determination of the Appeal.

In the premises, I find that the application dated 22nd August has merits and the same is allowed as prayed.

Dated, Signed and Delivered at Nairobi this 17th Day of November, 2017.

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L. NJUGUNA

JUDGE

In the Presence of

..... For the Appellant

..... For the Respondent