



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 427 OF 2008

AMARANTH ENTERPRISES LIMITED...APPELLANT/APPLICANT

VERSUS

FRANCIS KAIGUA

T/A FRANCA SCRAP METAL DEALERS.....RESPONDENT

RULING

This ruling relates to the application dated the 20th day of April, 2017 seeking orders that;

- a) The Honourable court be pleased to make orders that the sum of ksh. 314,000 deposited in court by the Appellant be released to the Respondent, Francis Kaigua.
- b) Further costs and interest be recovered from the Appellant herein.
- c) Costs of the application be provided for.

The application is premised on the grounds on the body of the same and its supported by the affidavit sworn by Kanyi Gakuya, on the 20th day of April, 2017.

The summary of facts as captured in the said affidavit are that; the respondent instituted Cmcc No.13392/2006 against the Appellant who filed an Appeal against the judgment. The Appellant obtained an order for stay of execution, on condition that it deposits in court the decretal sum of Ksh. 314,000 within 30 days. The court further ordered the Appellant to file a record of Appeal within 90 days.

That, though the Appellant deposited the money in court and filed a record of Appeal as ordered by the court, it did not pursue the Appeal and the same was finally dismissed on the 17th day of June, 2015 for want of prosecution. The Appellant has not shown any intention of reviving the same. In the circumstances, the Respondent has urged the court to grant the application as prayed.

When the application came up for hearing, it proceeded exparte. The Respondent did not file a response to the application notwithstanding that they had been served with a hearing notice way back on 19th October, 2017.

The court has considered the application and the material before it. The record shows that the Appeal was dismissed on 17th June, 2015, for want of prosecution and since then the Appellant has not shown any interest in reinstating the same.

The money was deposited in court as security pending the hearing and determination of the Appeal. The Appeal having been dismissed as aforesaid, it is only fair and just that the money be released to the respondent.

I therefore allow the application as prayed. The Respondent shall get the costs of the application and the Appeal.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 15th Day of November, 2017.

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L. NJUGUNA

JUDGE

In the Presence of

..... For the Plaintiff

..... For the Respondent