



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 368 OF 2011

THE STANDARD LIMITED. APPELLANT

VERSUS

STEPHEN AGGREY ODHIAMBO.RESPONDENT

RULING

The application before the court for determination is the Notice of Motion dated the 23rd May, 2016, brought by the Respondent under Sections 1A, 1B and 3A of the Civil Procedure Act, Order 1 Rule 10 and Order 51 Rule 1 of the Civil Procedure Rules. The Applicant seeks the following orders.

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2. **That** the Transnational Bank Limited be joined as an Interested Party to this suit for purposes of this application.
3. **That** Transnational Bank Limited be ordered to release and payout the sum of Ksh.894,988 and all accrued interest held in the Joint Interest Earning Fixed Deposit Account Reference No. 17545/530FDA00//1/1 in the name of GURAM & CO. ADVOCATES and PAUL MUNGLA & CO. ADVOCATES to the firm of Paul Mungla & Co. Advocates forthwith.
4. **That** Transnational Bank Limited do furnish Messers Guram & Co. Advocates and Paul Mungla & Co. Advocates with a complete statement of account of the investment.
5. **That** costs of this application be paid by Transnational Bank Limited.

The application is premised on the grounds set out on the body of the same and it's supported by the annexed affidavit of Stephen Aggrey Odhiambo sworn on 23rd May, 2016. The Deponent who was the Plaintiff and the Decree Holder in CMCC No. 10733 of 2005 and the Respondent in this appeal avers that judgment was delivered in his favour in the aforesaid matter.

The Appellant being dissatisfied with the said judgment filed an appeal and as a condition of staying execution pending the determination of the appeal, parties agreed to deposit the disputed sum of Ksh.894,988 in a fixed deposit account opened in the joint names of the advocates on record. That account was opened at Transnational Bank Limited, City Hall Way Branch on the 2nd September, 2011 under reference Number 17545/530FDA00/1/1.

The appeal was heard and determined in favour of the Respondent on the 3rd day of March, 2016 and costs were taxed.

By a joint letter of instruction dated 3rd May, 2016, the advocates duly instructed the Interested Party to determine the deposit and pay out the principal sum and all the accrued interest to the Respondent's Advocate's on record but it refused and/or failed to obey the said instructions. It is the Respondent's contention that the said refusal to payout the deposit and all the accrued interest has no basis in law and contract and it's in breach of their duty as a banker and by reason of the said failure it has become necessary for it to be joined as an interested party and/or necessary party to the appeal herein for purposes of this application.

In opposing the application, the Appellant filed a replying affidavit on the 25th July, 2016 sworn by Irene Kipkorir who has described herself as a legal officer at Transnational Bank Limited (the interested party herein).

In the said replying affidavit the Interested Party through the deponent concedes that, on or about the 21st September, 2011 the firms of Guram & Co. Advocates and Paul Mungla & Co. Advocates opened a fixed deposit account reference Number 17545/530FDA00/1/1 FDR and subsequently carried out the transaction on the 22nd September, 2011 for a sum of Ksh. Eight Hundred and Ninety four Thousand Nine Hundred and Eighty Eight (Ksh.894,988.00). She further depones that on or about 15th day of April, 2015, the Interested Party received a letter from the firm of R. Billing and & Co. Advocates explaining it had taken over the affairs of the firm of Guram & Co. Advocates after the death of its sole proprietor Mr. Mukesh Manjit Billing (the deceased).

The deponent further depones that on 3rd May, 2016, the firm of R. Billing & Co. Advocates together with the firm of Paul Mungla & Co. Advocates wrote to the interested party instructing it to release the principal sum together with the accrued interest to a provided bank account of Paul Mungla & Co. Advocates. That following the said letter, the interested party instructed its advocate M/s Robson Harris & Co. Advocates to write to the Law Society of Kenya to confirm whether the aforesaid firm of R. Billing & Co. Advocates was authorized to run the affairs of the firm of Guram & Co. Advocates which letter was replied to by the Law Society of Kenya vide theirs dated the 21st April, 2015 in which they advised the firm of Robson Harris & Co. Advocates not to authorize any transactions in both the client and office accounts of the law firm of Guram & Co. Advocates until a dispute that had arisen between the estate of the Late Mukesh Manjit and the firm of R. Billing & Co. Advocates had been resolved.

She further depones that the interested party wrote on several occasions to the firm of R. Billing & Co. Advocates advising them of the contents of the letter from the Law Society of Kenya and requesting the firm of R. Billing & Co. Advocates on the status of the outcome of the mediation which correspondences were not responded to by the said firm.

She depones that the bank has no interest whatsoever in the money its holding save for the handling charges for the said account and that the bank shall abide by such orders as the court shall deem fit to issue.

The court has carefully considered the application, the affidavits and the oral arguments made by the learned counsels at the hearing of the application. The bank has conceded that the firms of Guram & Co. Advocates and Paul Mungla & Co. Advocates opened a fixed deposit account in which a sum of Kshs. Eight Hundred and Ninety Four Thousand Nine Hundred and Eighty Eight (Ksh.894,988/-) was deposited.

The aforesaid amount is the decretal sum in CMCC No. 10733 of 2005 in which the Respondent herein was the Plaintiff.

It has also been conceded that the firm of R. Billing & Co. Advocates which took over the affairs of the firm of Guram & Co. Advocates together with the firm of Paul Mungla & Co. Advocates wrote a letter dated 3rd May, 2016 to the interested party instructing it to release the principal sum aforesaid, together with all the accrued interest to an account of Paul Mungla & Co. Advocates and the only reason why the interested party did not release the money was the letter dated 21st April, 2015 by the Law Society of

Kenya advising it not to release the said amount.

I have looked at the letter written by the Law Society of Kenya and it advises the Interested Party to await the outcome of the mediation of a dispute in connection with the winding up of the firm of Guram & Co. Advocates before authorizing any transactions in the client and office accounts of the said firm. The account herein is neither a client nor an office account of the firm of Guram & Co. Advocates but a stakeholders account which was opened in the joint names of the advocates for the sole purpose of securing the decretal sum pending the hearing and determination. The appeal was heard and judgment delivered on the 3rd day of March, 2016 and with that, and there being no appeal against the said decision, the purpose of which the account was opened was served and this explains why the two firms of advocates wrote a joint letter to the Interested Party advising it to release the funds held in that account, to the firm of Paul Mungla & Co. Advocates. I see no reason why the Interested Party has persisted in its refusal to release the funds as advised by the two firms of advocates.

In the premises aforesaid, I find that the application dated 23rd May, 2016 has merits and the same is granted in terms of prayers 3 and 4. The Interested Party shall bear the costs of the application.

Dated, signed and delivered at Nairobi this 18th day of August, 2016.

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L NJUGUNA

JUDGE

In the presence of

..... *for the Appellant*

..... *For the Respondent*