

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 576 OF 2013

JAMES MAINAREESPONDENT

- V E R S U S -

S. S. MEHTA & SONS LIMITEDAPPELLANT

RULING

1) James Maina, the respondent herein, took out the motion dated 22nd August 2016 in which he sought for inter alia an order directing that the decretal sum plus interest held in the joint interest earning account no. 2191732729 with Jamii Bora Bank Ltd be paid to the respondent's advocates, J. J. Khakula & Co. Advocates forthwith.

2) The motion is supported by the affidavit of James Waheire Maina. The motion was served but did not attract any response from the appellant.

3) It is the submission of the respondent that half of the decretal sum was deposited in an interest earning account as a condition for the grant of the order for stay pending appeal for the due performance of the decree. The respondent attached to his supporting affidavit a copy of the statement of account showing that as of 6th May 2014 a sum of ksh.286,133/- was outstanding in the account. The respondent further stated that since the appeal has now been dismissed the amount should be released to the decree holder to settle part of the decree.

4) I have considered the arguments put forward by the respondent.

It is not in dispute that the trial court granted the appellant an order for stay pending appeal on condition the appellant deposits half the decretal sum for the due performance of the decree on 29.1.2014. It is also not in dispute that the appeal, the substratum of the order was dismissed by virtue of a consent order recorded by the parties on 12th July 2016 after the lapse of twenty one (21) days. The sum kept in an interest earning account was to last until the appeal is heard and determined. There is no evidence that the decree has been settled after the appeal was automatically dismissed by operation of the consent order. The deposit was meant to settle half of the decretal sum. I find the motion to be well founded. It is allowed as prayed.

Dated, Signed and Delivered in open court this 28th day of October 2016.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent