



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 171 OF 1998

LUKE WAGANA.....1ST PLAINTIFF
GODFREY MAINA MWANGI.....2ND PLAINTIFF
PETER KIAGO MWANGI3RD PLAINTIFF
JAMES WANGUO KANYI4TH PLAINTIFF
NGURE MWANGI5TH PLAINTIFF

V E R S U S –

JOHN CIIRA.....DEFENDANT/APPLICANT
EQUITY BANK LIMITED..... INTERESTED PARTY

RULING

1) The subject matter of this ruling is an oral application made by John Ciira Gathogo, the defendant herein. The record shows that the defendant has on previous occasions written several letters over the same issue. The defendant complained that despite Equity Bank Ltd having released the money deposited in their partnership accounts held by the aforesaid Bank, the plaintiffs' advocate has failed to pay him his share. He has now beseeched this court to issue an order directing T. T. Aswani, the plaintiffs' advocate to pay him his share.

2) The history of the matter is that John Ciira Gathogo, the defendant, was in a partnership with the plaintiffs herein namely **Luka Wagana, Godfrey Maina Mwangi, Peter Kiago Mwangi and James Wanguo Kanyi**. The partnership was operating the business of selling timber. The partnership was dissolved in 1998 due to irreconcilable differences between the partners. The partners opened two bank accounts with Equity Bank Ltd being account nos. **0020100011371 and 0050101514744**. The plaintiffs accused the defendant of embezzling the funds and proceeded to file the current suit against him. The suit was heard and determined giving rise to the judgement of Justice (rtd) Mwera, delivered on 14th October, 2011.

3) According to the aforesaid judgement, the court directed interb alia that since the Partnership was dissolved, the partners should move to close the partnership accounts at Equity and Barclays Bank and jointly meet liabilities first after which they should share the net balance. The plaintiffs filed their bill of costs which was eventually taxed at kshs.402,905/= . On 9th October 2014, Mr. T. T.M. Aswani, the

plaintiffs' learned counsel, informed this court that he had served the defendant with a certificate of taxation and further sought for directions from the court on the way forward. The court considered the application filed by the defendant dated 16th October 2012 where he sought orders to have Equity Bank Limited ordered to release the funds held in partnership accounts number 0020100011371 at corporate branch and account number 005010151474 at Kiriani branch to the defendant. He further sought orders to have Equity Bank Limited ordered to pay bank interest that had accrued on the deposit in those bank accounts and that it pays the costs of the application

4) Upon considering the above application Justice (rtd) Onyancha made the following orders on 2nd July 2015 *inter alia*:

The manager of Equity Bank Limited of Corporate Branch in respect of account number 002010001371 and Kiriani branch in respect of account number 005010151474 are hereby ordered to release the funds therein with accrued interest to date to the plaintiffs'/applicants advocate T.T.M Aswani within 15 days.

1. Mr. T.T.M Aswani shall divide the aforesaid funds as follows:

i. Deduct kshs.402,905 as taxed costs.

ii. Divide the balance as per this judgement among the partners on a pro rata basis or equally, as the case may be.

2. Costs of this application shall be borne by all the parties herein.

5) On 7th July 2015, Justice (rtd)Onyancha ordered further that the parties to appear before the Deputy Registrar to divide the partnership funds in accordance with the judgement of Justice (rtd) Mwera and as per his ruling hereinabove. When counsel for the plaintiffs appeared before Hon. F. Wangila, Deputy Registrar on 4th August 2015, he informed her that the amount in the partnership bank accounts was not sufficient to settle the taxed costs and hence nothing remained for sharing between the partners. He prayed that whatever was in the partnership accounts be released to him. The court ordered that the amounts in the aforementioned accounts be released to T.T.M. Aswani Advocate.

6) On 11th May 2016, the defendant appeared in person and prayed for Equity Bank Limited to be ordered to pay him as per the ruling of Justice (rtd) Onyancha delivered on 2nd July 2015. I directed the defendant to serve a mention notice on the plaintiffs and or their advocate who were not present in court. When the matter eventually came up on 13th July 2016 for interpartes hearing, Mr. T. T. M. Aswani, the plaintiffs' advocate confirmed that Equity Bank Limited released the monies in the partnership accounts to him. It also came out clearly that the defendant was not paid.

7) Having looked at the court record, it is apparent that the partnership between the parties herein was dissolved. Upon dissolution, Justice (rtd) Mwera directed the parties to take steps to close the partnership accounts at Equity Bank Ltd and Barclays Bank Ltd. The honourable judge further ordered the parties to first settle liabilities if any and thereafter share the net balance. The aforesaid orders were further clarified by Justice (rtd)Onyancha who ordered that the funds in the aforementioned accounts be released to T.T.M. Aswani advocate. The learned judge also directed that T. T. M. Aswan was required to divide the net balance between the partners on a pro rata basis or equally after deducting the taxed costs of kshs.402,905/=.

8) It is also apparent that on 13th July 2016, the plaintiffs' advocate confirmed being in receipt of the monies in the aforesaid accounts having been paid by Equity Bank Limited. On 30th September, 2016 Mr. T. T. M. Aswani expressly stated that he had been paid by Equity Bank Ltd a sum of kshs.386,057/55 which amount could not settle in full the taxed costs of ksh.402,905/=. It is therefore clear that the amount paid to the plaintiffs' advocate left a deficit of ksh.16,837/45. In other words, the outstanding debt due to the plaintiffs' advocate as taxed costs remains at kshs.16,837/45. The plaintiffs'

counsel, was tasked by Justice(rtd) Onyancha to obtain the monies in the two partnership accounts, deduct the taxed costs and share the remaining sum between the partners. Arising from the above findings, it is therefore clear that no funds remained to be shared between the partners. In fact there is an outstanding debt in the sum of kshs.16,837/45 which is due to the plaintiffs' advocate.

9) In conclusion, **John Ciira Gathogo**, the defendant/applicant has passionately pleaded to this court to issue an order directing T. T. M. Aswani, the plaintiffs' advocate to pay him his share of the partnership funds. It is apparent that such an order cannot be issued because the learned advocate has clearly explained that whatever was paid to him did not settle in full the taxed costs as directed by retired Justices Mwera and Onyancha. In short, there is no net balance to be shared between the partners. There is a deficit of ksh.16,837/45 which has not been settled by the partners.

10) In the end, the defendant's application is dismissed with no order as to costs.

Dated, Signed and Delivered in open court this 16th day of November, 2016.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the Defendant