



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**  
**MISC. CIVIL SUIT NO. 148 OF 2012**

**SIMPSON SENDA KWAYERA T/A TELENEWS AFRICA**

**AND ATLANTIC REGIONS:.....PLAINTIFF/  
 APPLICANT**

**VERSUS**

**THE HONOURABLE ATTORNEY GENERAL:.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**MINISTRY OF TRADE:.....2<sup>ND</sup>  
 DEFENDANT/RESPONDENT**

**RULING**

**INTRODUCTION**

1. The application before the court is a **Notice to Motion** dated **27th January 2014** filed by the Plaintiff/Applicant pursuant to the orders and rules stated therein seeking to secure the following orders:-
  1. *That the Honourable Court be pleased to issue an order for the release of the sum of Kshs.10,000,000/= already deposited into court by the Ministry of East African Affairs, Commerce and Tourism as at the 23rd April, 2014, pursuant to the court order of 23rd August 2013.*
  2. *That an order be made for the disbursement of the said sum of Kshs.10,000,000/= as per the letter addressed to the Registrar of the High Court dated 27th January 2015, duly attached to the Plaintiff/Applicant's supporting affidavit.*
  3. *That any other order(s) which this Honourable Court may deem fit and just to grant in the circumstances.*
2. The application is premised on the grounds set out therein and is supported by affidavit of the Plaintiff **Simpson Senda Kwayera** dated **27th January 2015**.
3. The application is opposed vide a replying affidavit by **Ezekiel Wafula** dated **28th January 2015**.
4. The brief history of the application is that pursuant to the suit filed herein the Plaintiff and the Defendants entered into a consent on 14th February 2013 in which the Plaintiff was paid a sum of Kshs.65,000,000/=. Originally, the Plaintiff's decretal was over Kshs.110,000,000/= but the said

- consent reduced the same to the said Kshs.65,000,000/= (greater details and finer particulars of the history of the matter are contained in the Ruling of this court delivered on 19th December 2014). The Plaintiff sought to challenge that consent by his application dated 6th December 2013. In an attempt to execute the said consent the Plaintiff and the Defendants entered into a further consent on 23rd August 2013. Under this latter consent the entire decretal sum due to the Plaintiff arising from the consent of 14th February 2013 was to be deposited in court for the Plaintiff. In the consent of 23rd August 2013, there was also a component concerning the payment of Kshs.8,000,000/= being the agreed fees payable by the Plaintiff to his then advocates M/s E. Wafula & Associates. This aspect of the consent was necessary to enable the Plaintiff's current advocates M/s Maosa & Company Advocates come on record for the Plaintiff. The consent of 23rd August 2013 therefore also determined the fees payable by the Plaintiff to his advocates M/s E. Wafula & Associates.
5. It later turned out that the Plaintiff was not happy with the consent of 14th February 2013 which reduced the decretal amount to Kshs.65,000,000/= from over Kshs.110,000,000/=. At the same time, due to reasons already canvassed in this court's Ruling dated 19th December 2014, M/s E. Wafula & Associates was equally not happy with the consent which determined their fees at Kshs.8,000,000/=.
  6. The Plaintiffs and M/s E. Wafula & Associates, separately filed applications to set aside the said consents, each claiming they were short-changed. This court has already dealt with the issues and rendered a Ruling on 19th December 2014. For the reasons stated in the said Ruling, both applications were dismissed with, in the case of M/s E. Wafula & Associates, the court observing that they were the greatest beneficiary in the transaction. This was so because apart from the Kshs.8,000,000/= given to them in the said consent, the Plaintiff also gave the said M/s E. Wafula & Associates a further Kshs.5,000,000/= during further negotiations before the said applications were heard and determined, bringing the total amount in terms of fees to Kshs.13,000,000/- already paid to M/s E. Wafula & Associates by the Plaintiffs.
  7. According to the consent dated 23rd August 2013, the decretal sum which was to be deposited in court was to be disbursed to the Plaintiff but the court directed that a sum of Kshs.10,000,000/= remain with the court to be disbursed after the above applications for setting aside the consent were concluded. That was done by this court's Ruling of 19th December 2014. This application by the Plaintiffs therefore seeks the release of the said Kshs.10,000,000/= to the Plaintiff in light of the said Ruling.
  8. M/s E. Wafula & Associates claim a stake in the said Kshs.10,000,000/= on the grounds that they had a fees agreement dated 4th February 2013 with the Plaintiffs for a sum of Kshs.20,000,000/= and that the said agreement is still binding. On this ground M/s E. Wafula & Associates seeks a further Kshs.7,000,000/= from the Plaintiffs and hence his objection to the release of the said Kshs.10,000,000/= to the Plaintiff without considering his claim.
  9. I have carefully considered the application and the affidavits in support of and in opposition to the same. The only issue for this court to determine is whether or not M/s E. Wafula & Associates do have any legitimate claim to the said Kshs.10,000,000/= or part thereof.
  10. When M/s E. Wafula & Associates filed their application dated 5th May 2014 seeking to set aside the consent entered into on 23rd August 2013, this court heard and determined that application on its merits and dismissed it on 19th December 2014. The day that application was dismissed was also the day E. Wafula & Associates ceased to have an interest in these proceedings or in the money held in court. For M/s E. Wafula & Associates to claim an interest in the said Kshs.10,000,000/= would be to suggest M/s E. Wafula & Associates either did not understand the import of that Ruling, or that they had appealed against the same and their interest herein is to preserve the suit subject matter pending the appellate process. However, there is no evidence that they have appealed against the said Ruling or that they will be appealing against the same.
  11. In my view, with the dismissal of M/s E. Wafula & Associates application on 19th December 2014, the said firm of advocates ceased to have any further interests in the suit subject matter, and hence have no *locus* to oppose and/or otherwise impede the Applicant's quest for the release of the said sum of kshs.10,000,000/=.

12. Since the Defendants have not opposed this application, and since, this court has by its Ruling dated 19th December 2014 now determined the pending applications before the court, there is no further reason for delaying the release of the said Kshs.10,000,000/= to the Plaintiff/Applicant.

13. In the upshot I make the following orders:-

- a. *The Kshs.10,000,000/= currently deposited in court in this matter shall forthwith be released to the Plaintiff/Applicant.*
- b. *Costs shall be in the cause.*

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

Mr. Maosa for Plaintiff/Applicant

No appearance for Defendants/Respondents

Mr. Washika holding brief for Wafula for E. Wafula Associates

Teresia – Court Clerk