

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 2859 OF 1990

THOMAS MARTIN KIBISU..... .PLAINTIFF

VERSUS

1. JAMES MUKOLO ELISHA

2. EAST AFRICA ROAD SERVICES LTD.....DEFENDANTS

RULING

1. The Defendants have filed the notice of motion dated 30th October, 2014 seeking for the following orders:-
 - i. That this court orders that the sum of KShs. 195,714/= deposited with Eco Bank (formerly known as EABS Bank Ltd) in account number 01-50102238 and all accrued interest be released to C.W. Githae & Company Advocates.
2. It was contended that the said sum had been deposited as security for appeal in the joint names of the Defendants' then advocates, Daly and Figgis Advocates and the Plaintiff's advocates. That the appeal was concluded by the judgment of 14th February, 2014. That the Plaintiff's advocates were paid the decretal sum plus interest of KShs. 145,359.86/= to which receipt was acknowledged but the said advocates have declined to consent to the release of the funds deposited in the joint interest earning account.
3. The application is opposed by the Plaintiff who filed the replying affidavit of Gacheru Ng'ang'a. He admitted that the decretal sum has been paid to the Plaintiff's advocates but contend that there is a bill of costs pending taxation before the court. He stated that the whereabouts of the Defendants are not known and that in the event the amount is released, recovering costs shall be difficult.
4. I have read and considered this application. It is not in dispute that the said sum was deposited in the joint interest earning account. The aforesaid sum was deposited as a condition for stay of execution pending the hearing and determination of the appeal. The appeal has been heard and determined. However, as has been stated by the Plaintiff, the bill of costs has not been taxed and the allegation that the Defendants cannot be traced has not been controverted. Considering the aforesaid issues, it is safer to have the money remain in the account. In my view no loss shall be occasioned in having the money remain in the bank account until the issue of costs is tackled. The Plaintiff should expedite the hearing and disposal of taxation proceedings within a period of 90 days failure to which the orders sought shall stand automatically allowed. Costs shall be in the cause.

Dated, Signed and Delivered in open court this 24th day of April, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... **for the Defendants**