



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

HIGH COURT CIVIL NO. 10 OF 2012

MOHAMMED ATHUMANIAPPELLANT

VERSUS

CHARLES ONDIMU OGORI (SUING ON BEHALF OF ESTATE OF

THE DECEASED DOUGLAS) MAKEMAB).....RESPONDENT

(Being an appeal from the Judgment delivered by Hon. L. Mutende Chief Magistrate on 6th December 2011 in Mombasa PM CC NO. 1447 of 2009.)

RULING

1 .On 26th February 2005 the respondent's application dated 23rd October 2014 was fixed for hearing inter partes. That application sought the dismissal of this appeal for want of prosecution. In the presence of counsel for the appellant and the respondent the following order was made

“ The record of appeal be filed and served upon the applicant within 21 days from 26th day of February 2015, in default the appeal stands dismissed with costs.

2. Appellant did not file the record of appeal as ordered above and accordingly the respondent by his Notice of Motion dated 16th June seeks:

“That the decretal amount of Ksh 940,000 deposited in court vide receipt No. 0023184 be released to the respondent as general damages.”

3 .The application was served on appellant's advocates Mokaya Ogutu and Company advocates on 17th June 2015 but when it came up for hearing on 23rd July 2015 the said advocates did not attend court and nor had they filed any documents in opposition to the application.

4 .Respondent has based the application on two grounds. Firstly that this appeal stands as dismissed in view of appellant's failure to abide by the court's order of 26th February 2015 secondly that aforesaid money was deposited by appellant in this court as security for the decretal sum awarded by the lower court.

5 . I have perused the lower court file and I have noted that the decree of that court was for the amount of Ksh 940,250 plus costs at Ksh 76,110 in favour of the respondent.

6 Since the appeal is now dismissed with costs and since appellant deposited Ksh 940,000 in this court as security of this appeal it is right that, that amount be released to the respondent.

7 It I for that reason I grant the following order:

(a) The amount of Ksh 940,000 deposited in this court under the receipt No. 0023184 be and is hereby released to the firm of ADOGO ODHIANG & ASSOCIATES Advocates for the respondent.

(b) The respondent is awarded costs of the Notice of Motion dated 16th June 2015.

Dated and delivered at Mombasa this 30th day of July 2015.

MARY KASANGO

JUDGE

30.7.2015

Coram

Before Justice Mary Kasango

C/Assistant – Kavuku

For Appellant:

For Respondent:

Court

The Ruling delivered in their presence/absence in open court

MARY KASANGO

JUDGE