



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 1165 OF 2003**

JOHN BOSCO MAUNDU.....PLAINTIFF/RESPONDENT

VERSUS

WILLIAM WAMBUA KIWIA.....1<sup>ST</sup> DEFENDANT

CHARLES MUTUKU .....2<sup>ND</sup> DEFENDANT

HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT

**RULING**

1. Charles Mutuku Kiwia, the 2<sup>nd</sup> Defendant herein, took out the motion dated 8/8/2014 in which he sought for the following orders:

1. ***THAT for reasons to be recorded, the court be pleased to certify this application as urgent and grant leave to the 2<sup>nd</sup> Defendant's counsel to be heard during the current court vacation.***
2. ***THAT the warrants of arrest issued on the 30<sup>th</sup> of July 2014 be suspended until the hearing and determination of this application***
3. ***THAT the warrants and decree issued on the 30<sup>th</sup> of July 2014 be amended by reducing the sum stated in the said warrants by ksh.700,000/= being monies paid by the 2<sup>nd</sup> Defendant judgment Debtor in settlement of this decree.***
4. ***THAT consequent to the grant of prayer 3 supra the honourable court do decree that the sum due is kshs.1,196,647/-***
5. ***THAT consequent to the grant of prayers 3 and 4 supra the warrants herein be lifted after payment by the 2<sup>nd</sup> Defendant/applicant of the balance of the sum due of kshs.1,196,647/-***

2. The 2<sup>nd</sup> Defendant filed an affidavit he swore in support of the motion. When served, John Bosco Ngeta Maundu, the Plaintiff herein filed a replying affidavit he swore to oppose the application. When the application came up for interpartes hearing, learned counsels recorded a consent order to have the same disposed of by written submissions.

3. Before considering the substance of the motion, let me set out in brief the background of this dispute. This suit was originally filed as H.C.C.C. no. 24 of 1997 in which the Plaintiff sought for general damages for unlawful arrest, detention, malicious prosecution and imprisonment. The primary suit went missing prompting the court to issue orders for the reconstruction of a new file giving rise to Nairobi H.C.C.C no. 1165 of 2003. The case was heard in 2003 and the Plaintiff was awarded judgement in the

sum of kshs,800,000/= plus costs and interest. The file has a long history of the attempts made by the Plaintiff to execute the decree. The record shows that numerous applications were made by the Defendant putting hurdles on the Plaintiff's attempt to execute the decree.

4. Having set out the background of this motion let me now determine the merits or otherwise of the motion. Prima facie, the 2<sup>nd</sup> Defendant took out the aforesaid motion when the Plaintiff purported to execute a warrant of arrest premised on a decree for ksh.1,896,645/15. On 11.08.2014, the 2<sup>nd</sup> Defendant was prompted to deposit kshs.700,000/= in court as a condition for stay. The 2<sup>nd</sup> Defendant in a bid to settle the matter contemporaneously deposited two cheques amounting to kshs.1,196,607 making the total payments made to be kshs.1,896,607/=

5. It is the submission of the 2<sup>nd</sup> Defendant that the above figure represented full and final settlement of the warrants issued at the behest of the Plaintiff by this court on 30.7.2014. It is admitted by the 2<sup>nd</sup> Defendant that prior to the above mentioned payments, the Plaintiff had made payments in the sum of kshs.700,000/= thus surpassing the amount stated in the warrants of attachment/arrest of 30<sup>th</sup> July 2014. Accordingly, the 2<sup>nd</sup> Defendant is of the view that there is no sum due to the Plaintiff and that the 2<sup>nd</sup> Defendant is entitled to a refund of kshs.700,000/= deposited in court. The 2<sup>nd</sup> Defendant also pointed out that the computation of the payments made were based on court documents, payments made by the 2<sup>nd</sup> Defendant and the admissions made by the Plaintiff.

6. It is clear to me that the 2<sup>nd</sup> Defendant has explained and proved that sums in excess of those stated in the warrants were paid. With respect, I agree with the 2<sup>nd</sup> Defendant's assertion that the Plaintiff is estopped from claiming further monies other than those stated in the warrants dated 30<sup>th</sup> July 2014. The 2<sup>nd</sup> Defendant was led to believe that based on the warrants and the communication that remitting kshs.1,896,647/15 would settle the decree, the Plaintiff cannot go behind and state otherwise. The Plaintiff has no justification to ask for more money that exceeds what was stated in the warrant.

7. In the final analysis I am convinced that the motion dated 8<sup>th</sup> August 2014 is well founded. It is allowed in terms of prayers 3, 4 and 5.

8. Looking at the history of this dispute, a fair order on costs is for each party to meet its own costs. It is so ordered.

Dated and delivered in open court this 23<sup>rd</sup> day of October, 2015.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant