



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
MISC. APPLICATION CASE NO 323 OF 2014

KENTOURS SACCO SOCIETY LIMITED.....APPLICANT

VERSUS

SIMBA TECHNOLOGIES LIMITED.....RESPONDENT

RULING

1. The Notice of motion dated **17th July, 2015** seeks orders that the warrant of attachment issued herein be amended to include the sum of **Kshs. 480,500/-** plus interest at 12% from 18th September 2013, the aforesaid sum being costs of the Arbitral Tribunal's proceedings due from the Respondent. The Applicant also seeks an order to the effect that the Decree Holder/Applicant be at liberty to execute for the said sum of Kshs. 480,500/- plus interest at the rate of 12% with effect from 18th September 2013.
2. The application is supported by the annexed affidavit of **Mr. Eric Mutua**, Advocate in which he deponed that on the 18th September 2013, the applicant paid a sum of Kshs 480,500/- towards the Arbitral Tribunal's costs, and that in the Final Arbitral Award, it was ordered that the costs of the Arbitral Tribunal assessed at Kshs. 961,000/-, be paid by the Respondent, and that in the event that the Claimant had paid the same then such sums would be reimbursed by the Respondent with interest thereon from the date of payment.
3. It was further deponed that in computing the decretal sum for the purpose of execution, the said amount of Kshs. 480,500/- was omitted by the court registry, hence the instant application and the orders sought.
4. The application is brought under Sections 34 and 99 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya. It proceeded *ex parte* after the court satisfied itself that due notice of the hearing thereof had been given to the Respondent. What emerges from the supporting affidavit and the annexures thereto is that the Final Award was pronounced by the Arbitrator, Mr. Collins Namachanja, Notification of the Award was filed, whereupon the Final Award was adopted as Judgment of the Court on 28th April, 2015. Thereafter, a Decree was drawn in terms thereof dated 4th June, 2015. What followed was an application of execution dated 11th June, 2015. The Arbitral Award itself directed that:-
 1. **The Respondent shall pay to the claimant the sum of Kshs. 1,347,114.80/- within 21 days of the date which the Award was taken up by the party.**

Interest on the aforesaid sum would accrue at the rate of 12% per annum.

2. **The claimant was entitled to the costs of the reference assessed at Kshs.350,000/- which was to**

be paid by the respondent within 21 days of the date of taking up of the Award, failing which interest to accrue thereon at the rate of 12% per annum until full payment.

3. Costs of the Arbitral Tribunal assessed at ksh.961,000/- to be paid by the Respondent before taking up the Award, failing which the same to be paid in full by the claimant. That in the event of payment by the Claimant then the respondent was to forthwith reimburse the amount with interest at that rate of 12% from the date of payment by the claimant until the date of such reimbursement. ,

5. Annexure EM2 to the supporting Affidavit confirms that the claimant, **Kentours Sacco Ltd**, had paid a sum of Kshs. 480,500/- on or around 18th September 2013 towards the Arbitrator's fees. The Final Award was made subsequently on 9th January 2014. Accordingly the Applicant is entitled to reimbursement thereof from the Respondent. It is further evident that this sum of money which was legitimately due to the applicant was excluded from the warrants of attachment and sale issued herein on 11th June 2015 (EM3) though it appears an amount of Ksh 830,500/- was posted as costs in the application for execution as part of the costs awarded. In the case of **Vallabhdas Karsandas Raniga Vs. MansukhalalJivraj & others (1965) EA 700** in which it was sought to amend a judgment to include a refund of the monies paid by the Appellant, the East African Court of Appeal held that;

“A slip order will only be made where the court is fully satisfied that it is giving effect to the intentions of the court at the time when the judgment was given, or in the case of a matter which was overlooked, where it is satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention.”

6. The court is therefore satisfied that this is an omission that can and should be corrected under the Slip Rule. Accordingly pursuant to sections 34 and 99 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya, the application dated 17/7/2015 is hereby allowed.

Orders given as prayed in paragraphs 1 and 2 thereof.

It is so ordered.

RULING SIGNED, DATED and DELIVERED at NAIROBI this 21st day of October 2015

OLGA SEWE

JUDGE