



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NUMBER 403 OF 2008

TWIGA CHEMICALS LIMITED. APPELLANT

VERSUS

FAITH MUKONYO KINGOO. 1ST RESPONDENT

THEOPHILUS K. RONO. 2ND RESPONDENT

JOHN NG'ANG'A. 3RD RESPONDENT

RULING

The application for determination by the court is the one dated 14th October, 2015 brought by way of a Notice of Motion.

The same is brought under Section 1A, 1B, 34, 38, 78 and Order 26 Rules 8(2) of the Civil Procedure Rules. It is seeking for the following orders.

1. That the sums deposited in court on 16th September, 2008 vide Cheque No. 603148 by M/s Muriu Mungai and & Co. Advocates be released to M/s E. K. Mutua & Co. Advocates.
2. Costs of this application be provided for.

It is premised on the grounds that: -

- a. The Appeal herein was dismissed.
- b. The sums deposited with the court were held pending the determination of the Appeal.
- c. No Appeal has been preferred against the High Court decision.

The Application is supported by the Affidavit of Eric Mutua Advocate which is annexed to the Application. It came up for hearing on the 14th October, 2015 when it proceeded ex parte as the Respondent was not present in court and no replying affidavit was filed in opposition.

The summary of facts as captured in the Affidavit in support are that:

The Appeal herein arises from the Judgment of the subordinate court in CMCC No. 13267 of 2006 which

was delivered on the 28th July, 2008.

Following an Application by the Appellant for stay of execution, the lower court ordered the Appellant to deposit in court the entire decretal sum pending the hearing and determination of the Appeal.

In compliance with the court order the Appellant deposited in court the decretal sum totaling to Ksh.373,500/- vide cheque No. 603148. The money was deposited on the 16th September, 2008.

After filing the Appeal, no steps were taken by the Appellant to prosecute the same and on 17th June, 2015 the court dismissed the Appeal for want of prosecution under Order 42 Rule 35(2). No action has been taken by the Appellant since the Appeal was dismissed and the order of dismissal still stands.

In her submissions counsel for the Respondent urged the court to order that the money be released to the Respondent's firm of Advocates since it was deposited pending the hearing and determination of the Appeal.

She further submitted that since the Appeal was dismissed the Advocate for the Appellant has neither appealed against that order nor applied to have it set aside. She urged the court to allow the application as prayed.

I have considered the Application before the court. I have also perused the court record and confirmed that indeed an order was given on 10th September, 2008 for stay on condition that the decretal sum is deposited in court within 7 days of the date thereof and the said order was complied with.

The money was deposited pending the hearing and determination of the Appeal which was dismissed on the 17th June, 2015.

In the premises aforesaid it is only fair that the money is released to the Respondent.

The application dated 14th October, 2015 is hereby granted as prayed. Costs to the Respondent.

Signed, Dated and delivered at Nairobi this 17th day of December, 2015.

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L. NJUGUNA

JUDGE

In The presence of

..... ***for Appellant.***

..... ***for the Respondent.***