



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 190 OF 2002

NOORDIN FAZLEHUSEIN RAJABALIPLAINTIFF

-VERSUS-

1. KUTUBDIN AKBERALI KHANBHAI

2. HUSSEINBHAI KHANBHAI

3. HATIMI JOINERY WORKS LIMITED DEFENDANTS

RULING

ON NOTICE OF MOTION DATED 31ST JULY 2014

1. By the Notice of Motion under consideration Plaintiff seeks an order for the amount of Kshs. 2,900,000/- deposited in Bank of India to be released to his present Counsel.
2. The brief back ground is that Judgment was entered in favour of Plaintiff on 11th December 2002 for Kshs. 2,566,600/- plus interest and costs.
3. Following the dismissal of Defendant's application on 13th March 2009 Defendants filed a Notice of Appeal on 26th March 2009.
4. Defendant's application of stay pending appeal dated 23rd April 2009 was granted on condition Defendants deposited Kshs. 2.9 million in an interest earning account in the names of the Counsels then appearing for the parties. Such deposit was availed as deposit in a joint account of the Counsels at Bank of India.
5. Plaintiff has since changed his Advocate and is now represented by Kishore Nanji Advocate.
6. His present Advocate successfully moved the Court of Appeal and Defendant's Notice of Appeal was dismissed on 22nd October 2013 in **Mombasa Civil Appeal No. 14 of 2013.**
7. Learned Counsel Mr. Nanji stated from the bar that he has been unsuccessful to trace the proprietor of the firm of Advocates A.Y.A JIWAJI & JIWAJI ADVOCATES, the firm that previously represented the Plaintiff and in whose name the deposit was made at Bank of India in conjunction with Defendant's

Advocates M/s AMOLO & KIBANYA ADVOCATES. He believed Mr. Jiwaji had relocated to U.K. He therefore requested that an order be made that the deposit be released to his firm. He also said that the original deposit slip had been misplaced and requested an order of this Court do authorize the withdrawal without the original deposit slip.

8. The Defendant's Advocates were served with the Notice of Motion under consideration but did not attend the hearing nor did they oppose it.

9. The application is merited and I grant the following orders-

a. Bank of India is hereby ordered to release to the firm of KISHORE NANJI ADVCOATE the amount of Kshs. 2,900,000/- deposited in respect of this matter in the joint names of A.Y.A. JIWAJI & JIWAJI and ABOO & COMPANY and all the accrued interest thereof.

b. Bank of India shall release the said funds to the firm of KISHORE NANJI ADVOCATE without requiring the production of the deposit slip.

c. The costs of Notice of Motion dated 31st July 2014 are awarded to Plaintiff as against Defendants.

DATED and DELIVERED at MOMBASA this 18TH day of SEPTEMBER, 2014.

MARY KASANGO

JUDGE