



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 342 of 2012

CHERAIK MANAGEMNT SERVICES LTD.....PLAINTIFF

-VERSUS-

NATIONAL SOCIAL SECURITY FUNDS.....DEFENDANT

RULING

The parties in this matter vide a joint letter signed by the parties counsel dated 28th January 2013 request the court to record a consent in the following terms:-

“BY CONSENT;

(1)The suit herein together with any/all pending applications filed by the Plaintiff against the Defendant be wholly withdrawn.

(2)The plaintiffs do pay the costs to be agreed or taxed by the court”.

By letter dated 12th February 2013 and 27th February 2013 addressed to the Deputy Registrar the Firm of Ondabu & Co. Advocates sought to have the sum of Kshs. 600,000/= deposited in court on 17th July 2012 by the plaintiff released to them following the adoption of the aforesaid consent of the parties by the court on 6th February 2013.

The matter was listed before me on 13th March 2013 for directions in regard to the release of the said sum of Kshs. 600,000/= and counsel for the parties were not agreed on the directions the court should grant prompting me to direct that the parties file written submission in regard to the matter after review and consideration of which I would give a ruling.

Both parties filed their written submissions and on the part of the firm of Okoth & Kiplagat Advocates for the Defendant their view as per their filed submissions is that the consent order provided that the plaintiffs do pay the costs to be agreed or taxed by the court to the defendant. The defendant has furnished a bill of costs in the sum of Kshs. 464,000/= and it is the Defendants Advocates view that these costs should be offset from the deposit held by the court such that only a sum of Kshs. 136,000/= should be released to the plaintiff.

The plaintiffs for their part contend that the sum of Kshs. 600,000/= was deposited as part of rent arrears which have since been fully settled in full vide ELC No. 123 of 2012 which is related to this file which fact the Defendants do not dispute. The plaintiffs further contend the issue of costs was appropriately dealt with in the consent order.

The parties have not agreed on the costs payable and therefore the Plaintiff Advocates contend that the Defendant should tax their costs as per the consent order.

I have considered the consent order and the rival submissions and observe that the consent order recorded was silent as to how the costs would be paid and specifically the consent order did not require that the costs once agreed or taxed be paid out of the deposit held by the court. In the circumstances it is my view that the release of the deposit cannot be tied to any agreement on costs and neither should the deposit be held and/or treated as security for costs to be awarded to the Defendant.

Once the costs payable to the defendant are agreed and/or ascertained through taxation the Defendant can execute for the same incase the plaintiff fails to pay.

In the premises I direct and order that the deposit of Kshs. 600,000/= held by the court on account of the plaintiff be released to the plaintiff's advocates as requested by the Advocates vide their letter of 27th February, 2013.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF APRIL 2013.

**J. M. MUTUNGI
JUDGE**

In the presence of:

..... for the Plaintiff
..... for the Defendant