



REPUBLIC OF KENYA

High Court at Mombasa

Civil Appeal 138 of 2001

JOHN MWITA T/A MUNYU ENTERPRISES APPELLANT

V E R S U S

WONDER FOODS LTDRESPONDENTS

RULING

The application is expressed to be brought under Section 3A of the Civil Procedure Act seeking orders for the release of Kshs. 450,000/- deposited in Court by the Appellant as security pending the outcome of the Appeal No. 138 of 2001 in which the Appellant sought to set aside the lower Court judgment SRMCC No. 4435 of 1999.

The appeal in the High Court is said to have been successful and the judgment was set aside and the Appellant has since filed a defence and that since year 2010 when the Appellant filed and served defence the Respondent has taken no steps to prosecute the suit.

I have perused the Court records and I am satisfied that a stay of execution was granted by Khamiwa, Commissioner of Assize (as she was then) pending appeal.

The appeal was successful as per the judgment of Azangalala J. delivered on 29th September 2010. Subsequently on the 6th October 2012 the Appellant filed a defence to SRMCC 4435 of 1999 but no steps have been taken by the Plaintiff.

An application was made to the lower Court for the funds to be released to the Appellant.

The application to release the funds was served on Ms Shariff & Co. Advocates who took over the firm of J. M. Gandani & Co. Advocates. An attempt was also made to serve the Respondents but the company was found to have been close.

Without evidence to the contrary I find that the Respondents were duly served and the application is not opposed.

It is accordingly ordered that Kshs. 450,000/- deposited in Court by the Appellant/Applicant be released to him forthwith.

Ruling read and delivered in open Court this 29th day of May, 2013.

M. MUYA
JUDGE

In the presence of:-

Mr. Wachira holding brief for Mr. Waithira for the Appellant

Court clerk – Mr. Musundi