



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 6 OF 2002

PAN A. AND EQUIPMENT LIMITED.....PLAINTIFF

VERSUS

NAIROBI CITY COUNCIL.....DEFENDANT

RULING

The Applicant in the Notice of Motion dated 2nd June, 2010 is the Decree Holder in this suit wherein a consent judgment was recorded on 28th February, 2002 and a decree in terms thereof issued on 5th March 2002. The decretal sum has been settled save for a sum of Kshs. 686,450.15/= in respect of which the present application has been filed, praying that:

- 1. The Defendant and/or its subsidiary, Nairobi City Water & Sewerage Co. Ltd do forthwith pay to the Plaintiff Kshs. 686,450.15/= together with interest thereon at 22% per annum from 8th September 2005 until payment in full.**
- 2. The costs of this application be met by the Plaintiff.**

I have had a look at the grounds cited in support of the application and the depositions of learned counsel for the Applicant, Mr. Christopher Ndolo Mutuku in the supporting affidavit sworn on 2nd June 2010. The application was initially listed for hearing before the Hon. Lady Justice Koome before her ladyship's transfer from the Milimani Commercial Courts. The honourable judge had directed that the parties herein do file written submissions in the application of which only the Plaintiff's submissions were filed on 8th October 2010. It is not clear whether the Respondent was served with the submissions. A judgment date

was reserved on 21st October 2010.

In the course of preparing the judgment and upon perusal of the record, I have formed the opinion that the Notice of Motion is misplaced in that the suit having concluded and a judgment and decree entered accordingly, the suit has been conclusively determined and an interlocutory application cannot be filed as a way of enforcement of the decree.

It is clear from Ground 2 of the application that, in essence, what the Applicant seeks is a declaratory order as regards the money retained by the Respondent and/or its subsidiary when settling the decretal sum. In my view, such an order can only be made in a declaratory suit wherein the Applicant demonstrates that the sum claimed is due and payable and is not the subject of any deduction as alleged.

Except for **subrule 6(2) of Order XXIV**, which I still find not useful in the circumstances of this case, the provisions invoked to move the court do not apply. For the reasons stated herein I am not persuaded of the merits of the application and the same is hereby dismissed.

DATED SIGNED and DELIVERED at NAIROBI this 11TH day of MARCH, 2011

M. G. MUGO

JUDGE

In the presence of:

Miss Kahoro holding brief for Mr. Mutuku For the Applicant

No appearance For the Respondent