



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 135 of 2007

KENNEDY MUYESU MUNAVI PLAINTIFF
VERSUS

BARCLAYS BANK OF KENYA LIMITED
MARKET BRANCH NAIROBI DEFENDANT

JUDGMENT

1. The plaintiff instituted this originating summons seeking for orders:-

“That Barclays Bank of Kenya Limited, Market Branch be and is hereby ordered to release Ksh.117,773.45 together with interest accrued thereon under Fixed deposit account Number 7024480 to the plaintiff herein as the Administrator of the estate of Grace Andia Muyesu (deceased) to enable the said Administrator distribute the same to the beneficiaries.

2. The application is supported by the plaintiff’s affidavit sworn on 13th March 2007 and a further affidavit sworn on 13th March 2009. The defendant opposed the originating summons through a replying affidavit sworn by David Swao a senior legal counsel for the defendant which was sworn on 30th April 2007. Directions were given on 26th January 2009 that the Originating summons will be determined by way of affidavits on record.

3. According to the plaintiff he is the legal representative of the estate of the late Grace Andia Muyesu (Deceased) who died on 12th December 1991. The plaintiff was issued with the Letters of Administration on 7th August 2002. The grant of letters of administration was subsequently confirmed on 5th December 2005. During the deceased’s life, she operated an account with the defendant at the Market Branch being A/c No.7024480 under where she held two fixed deposit accounts for Ksh.64,240.10/- and

Ksh.53,533.35/- respectively. When the deceased passed away, the plaintiff requested the defendant to release the money so that it can be distributed to the beneficiaries. The defendants failed to release the money or even to respond to the various letters addressed to the defendant by the plaintiff's lawyers. That is when the plaintiff filed the present suit.

4. On the part of the defendant, they have denied the existence of the account. Moreover, they argued that the copies of the fixed deposits receipts annexed to the application shows the money was deposited on 25th May 1992 when the deceased had died intestate on 12th December 1991. According to the affidavit of David Swao the deceased could not have deposited the money because she had already passed away and no one could have done it for her without the requisite letters of administration, which was issued on 7th August 2002.

5. The 2nd point urged by the defendant is that account numbers for market branch customers were changed when the branch merged database with Queensway branch. There has been a search regarding this account but there has been no indication of what happened to the account of the deceased. Mr. Swao further states under paragraph 18 of the replying affidavit as follows:-

“That for the avoidance of any doubt, the bank, I am personally aware, is also undertaking an intensive search with its Queensway branch to establish whether the number may be existent in the database and I undertake to provide the findings thereon upon completion of the search.”

6. In response to the allegations denying the existence of the deceased accounts, the plaintiff annexed copies of the bank statement to show the deceased operated the subject account and the proceeds therein were put in a fixed deposit account which was supposed to be renewed after every three months. According to the plaintiff the bank statements used to be sent through him and they were renewed further even after the deceased passed away. There was no response to this contention.

7. Going by the evidence on record, it is more probable than not that the deceased operated the subject account with the defendant which was supposed to be renewed every three months as per the certificate of fixed deposit. That is how the deposit was automatically renewed even after the demise of the deceased. The plaintiff has on a balance of probability proved that the deceased held the account with the defendant.

8. The defendant has merely denied the existence of the account and offered no explanation as to what may have happened to the deceased money held in the account. From the time the demand was made, up to the time this suit was filled the defendant has not made efforts to establish from their Queensway branch whether the deceased's account number exists in their data base which was merged with the market branch.

9. The plaintiff's documents showing the movements of the money from the deceased bank account to the fixed deposited has not been controverted by the defendant, accordingly the plaintiff should be granted the orders as prayed together with the costs of this suit.

JUDGMENT READ AND SIGNED ON 29TH JANUARY 2010 AT NAIROBI.

M.K. KOOME
JUDGE