

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL APPEAL NO. 125 OF 2009

**JOHN KOSGEI APPELLANTS
KIPKKABUS TEA FARM**

VERSUS

DUNCAN KIPLAGAT RESPONDENT

R U L I N G

The application dated 23rd February 2011 by the appellants is substantially for orders that there be a further stay of execution and/or any execution pending the determination of the application and that there be a declaration by the Court that the appellant has deposited the decretal sum in a joint interest earning account in full compliance with a court order.

The grounds for the application are that a ruling was delivered on 25th January 2011 requiring the appellant to deposit the decretal sum in a joint account within 30 days pending the hearing and determination of the intended appeal. The appellant complied with the court order and deposited the amount which is now being disputed by the respondent thereby rendering it necessary for the court to determine what constitutes the decretal sum.

In her submissions, learned counsel for the appellant, **M/S Sang**, contended that the amount i.e. Kshs.302,620/- was sufficient as it was not meant to include costs and interest.

On his part, learned counsel for the respondent **Mr. Limo**, contended that the decree stipulated the decretal amount consisted of the principal sum inclusive of costs and interest. Therefore, the appellant did not deposit the entire decretal amount as ordered by the court.

From the foregoing, the issue for determination is what actually constitutes a decretal amount.

In essence, a decree is a court's final judgment. A decretal amount is therefore derived from a decree because it relates to a decree. Consequently, a decretal amount consist of the principal amount together with costs and interest. The interest would normally be charged on the principal amount.

The decree applicable herein is that dated 5th November 2009, a copy of which is annexed to the respondent's replying affidavit and marked "RKL I". It clearly shows that the decretal amount stands at Kshs.**368,867/-** with costs standing at Kshs.**50,400/-**. This translates to a total sum of Kshs.**419,267/-** which is the actual decretal amount required to be deposited by the appellant and not Kshs.**302,620/-**.

Consequently, this application is misconceived and is without merit. It must and is hereby dismissed with costs to the respondent.

Ordered accordingly.

**J. R. KARANJA
JUDGE**

(Read and signed this 1st day of July 2010)