



**TRINITY PRIME INVESTMENTS LIMITED .....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**ERICK ANANDA JACKSON.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**MAURICE ALDOUS OPAR.....DEFENDANT**

**R U L I N G**

This application has been brought by way of notice of motion under Section 2(1) of the Civil Procedure Act Order XXIVL Rule 6(1) Order Rule 1 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. The said application seeks the following orders:

- 1. That this suit be marked as compromised by the consent entered into by the parties on 6<sup>th</sup> February, 2003.**
- 2. That the Defendant/bear the costs of this application and the suit.**

During the hearing of the application, Mr. Nyikuli complained that the grounds of opposition had only been served on him on 22<sup>nd</sup> September, 2009 and hence, he urged the court to expunge the same from the record. Further to the above, he prayed for an order to mark the suit compromised by the consent entered into by the parties on 6<sup>th</sup> February, 2003. He also prayed for the costs of the suit. Apart from the above, the learned counsel reminded the court that on 7<sup>th</sup> October, 2002, a decree was made by consent of the parties condemning the defendant to pay the plaintiffs a sum of Kshs.875,000/- plus interest at court rates of 12% p.a. from 4<sup>th</sup> July, 1997 on or before 30<sup>th</sup> November, 2002. Consequently, upon such payment, motor vehicle Reg. No. KAG 450 X was to be released to the defendant and in default, the said vehicle to be released to the plaintiffs. Subsequently, the defendant defaulted in the payment of the sum plus interest as decreed on 7<sup>th</sup> October, 2002. He concluded by stating that the above order was granted on 6<sup>th</sup> February, 2003 by Ringera, J. and hence under the circumstances, the suit has been wholly compromised.

On the other hand, Mr. Bwire for the defendant, submitted that his client had already filed grounds of opposition that he wished to rely on. Further to the above, he also submitted that the application before me was an abuse of the court process. According to Mr. Bwire, there was a consent that was recorded in the suit on 7<sup>th</sup> October, 2007 and thereafter, the defendant never paid the Kshs. 875,000/- and the plaintiff came to court for the release of the vehicle. He was of the opinion that the terms of the decree had been satisfied. He concluded that the suit was spent and hence there was no need to compromise the suit. He concluded that the consent dictated the issue of costs and that the prayers being sought in the application are not available any longer.

This court has carefully considered the application together with the submissions by the learned counsels. From the above it is apparent that the defendant has conceded through his counsel that he actually never paid Kshs. 875,000/- as agreed – together with interest. Neither has the defendant denied the fact that thereafter, the plaintiff moved to court and obtained an order compelling the former to release the vehicle to the latter. Briefly speaking the defendant never met his part of the agreement. In view of the above, I hereby concede to the application in terms of prayer No. 1 and 2.

Those are the orders of the court.

**MUGA APONDI**

**JUDGE**

Ruling read signed and delivered in open court in the presence of Nyikuli for Applicant

.....for Respondent

**MUGA APONDI**

**JUDGE**

**29<sup>TH</sup> OCTOBER 2009**