



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 3665 of 1991

1. Land & Environmental Law Division

2. Subject of Main Suit: (i) Redemption of a mortgage property on

LR7752/95

(Original 7752/32/1 Kyuna Estate Nairobi)

HCCC 1498/95 (OS)

(ii) Change of property challenge of statutory

power of Sale HCCC No. 160/95

3. Orders of Court to deposit 1,373,832.40 into an account.

Consent thereafter entered on 6th December 1996 inter alia that 1.8m be refunded to Deepak Pundit 5th defendant.

4. Application that the sum of 1.8m do state belongs to defendant by decision of Court of Appeal

5. Application opposed by respondent

6. Held

That there be formal proof on the issue of whether funds belongs to defendant.

That the matter be set down for hearing.

7. Case law - Nil

8. Advocate.

B.M. Ashitiva of Nyachae & Ashitiva Co. Advocates for the defendant/applicant - present

F.N. Wamalwa of F.N. Wamalwa & Co. Advocates for the plaintiff/respondent – present

PETER NG'ANG'A MUIRURI.....PLAINTIFF

VERSUS

CREDIT BANK LIMITED.....DEFENDANT

RULING

(I). BACKGROUND

1. The advocate herein for the applicant prays that moneys held jointly by both advocates in an account be released to the defendant.
2. The parties had filed two suits HCCC. 1490/95 OS on the issue of redemption of mortgage property and HCCC 160/95 on the issue of charge of property challenging the statutory power of sale.
3. It appears that a consent by parties was entered into. There was a challenge of this consent. There were cases in the Court of Appeal that was filed 3 in total. In each case it seems that the Court of Appeal insinuated that the sum deposited with the advocates belong to the defendant. The advocate for defendant filed this application relying on the Court of Appeal decisions seeking this court's orders to release the said funds to the defendant.

(II). OPINION

4. No trial has been determined. What arguments that had in the past been put forward had been by way of submission.
5. The defendant claims the funds are his. If this is so all the court requires is there to be a formal proof hearing to confirm this issue.
6. There is nothing else pending in this file as the consent appears to have compromised the same. If per chance there is any matter left for determination it be set down to hearing together with the defendant application on formal proof. The application is partially allowed.
7. There will be costs in the cause.

DATED THIS 12TH DAY OF MARCH 2008 AT NAIROBI

M. A. ANG'AWA

JUDGE

B.M. Ashitiva of Nyachae & Ashitiva Co. Advocates for the defendant/applicant - present

F.N. Wamalwa of F.N. Wamalwa & Co. Advocates for the plaintiff/respondent – present