

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc.App.329 of 2007

ERDEMANN COMPANY (K) LTDPLAINTIFF

VERSUS

FERDINARD KOMBODEFENDANT

RULING

On 28th November 2007 the original Applicant herein, ERDEMANN COMPANY (KENYA) LTED, deposited in court the sum of Kshs.558, 804/00 towards the decretal sum awarded by the lower court in fulfillment of a condition for grant and it of a temporary stay of execution pending disposal of its application for further extension of time to lodge appeal out of time. That application was eventually dismissed by a ruling dated 28th February 2008.

The original Respondent, who is the decree – holder in the lower courts, FERDINARD KOMBO, has now applied by chamber summons dated 7th May 2008 for the main order that the aforesaid sum of Kshs.558,804/00 be released to him through his advocates on record towards satisfaction of the decree. That prayer is not opposed, and I hereby grant it. There is a second prayer, that the decree – holder be at liberty to execute “for the balance of Kshs.97, 390/20, being the balance of the price accumulated up and including the 19th day of April 2008”. It is not stated in the application what this "price accumulated" might be, but during arguments it transpired that it was meant to be further accumulated interest.

Now, matters of execution of the decree herein belong to the lower court that passed the decree of the Kshs.558,804/00 that will be released to the decree – holder will not satisfy to the decree, let him apply to the lower court opportunity. The decree has not been sent to this court for execution, this court was only dealing with an application for extension of time to file appeal, which application was ultimately refused.

In the result, only prayer No.1 of the chamber summons dated 7th May 2008, which is not opposed, is allowed.

Prayer No.2 is hereby struck out for being misconceived. Parties will bear their own costs of this present application. It is ordered.

DATED AT NAIROBI THIS DAY OF MAY 2008.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 30TH DAY OF MAY 2008

