



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 145 of 2001**

**NGURUMAN LIMITED.....PLAINTIFF**

**VERSUS**

**SHOMPOLE GROUP RANCH.....1<sup>ST</sup> DEFENDANT**

**MOSHILA OLE MATAYIAN.....2<sup>ND</sup> DEFENDANT**

**NKOITIKO OLE NAPINDIYA.....3<sup>RD</sup> DEFENDANT**

**TURANA OLE KUMARI.....4<sup>TH</sup> DEFENDANT**

**R U L I N G**

On the 3<sup>rd</sup> June 2008 M/s A.F. Gross Advocate on behalf of the Defendants brought an application by way of a Chamber Summons seeking order to have the funds lodged by Nguruman Limited on 25<sup>th</sup> May 2004 in a joint interest earning Account in the names of AF Gross Advocate and K.S. Osmond Advocate at Chase Bank (K) Limited being Account Number 8104154006 pursuant to the order made by the Honourable Mr. Justice Ransley on 13<sup>th</sup> May 2004 in the instant suit be forthwith and unconditionally released to the Plaintiff/Applicant.

The application is based on the grounds that the said sum was for taxed costs after the suit had been struck out which suit was reinstated on appeal to the Court of Appeal. When this application when this application came up for hearing. Mr. Osmond for the 1<sup>st</sup> Defendant raised a preliminary objection on the ground that the order by Ransley J which directed that the said funds be deposited in a joint interest earning Account which was not dated has not been extracted and did not specify the time it was to be in force and further that this application is incompetent in that it does not state the provisions of the law under which it is brought.

Mr. Njuguna Counsel for the Applicant in reply to the preliminary objection conceded that indeed the application was brought under wrong provisions of the law and applied orally for leave to amend the same which leave was granted.

He then went on to submit that the deposit was meant for security for costs pending appeal and the appeal having been heard and determined and the suit having been reinstated by the order of the Court of Appeal the funds ought to be released and urged the court to dismiss the preliminary objection and allow him to proceed with his application.

The said funds having been deposited as security for costs pending appeal and the appeal having been heard and determined and the suit having been reinstated it is only fair and just that the Applicant be allowed to prosecute his application for the release of the said fund.

Accordingly the Defendant's preliminary objection is rejected and I order that the Applicant is at liberty to prosecute his application dated 3<sup>rd</sup> June 2008.

Dated and delivered at Nairobi this 24<sup>th</sup> day of September 2008.

**J. L. A. OSIEMO**

**JUDGE**