

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 370 of 1985

KAMAL MECHANICAL ENGINEERING WORKS.....APPELLANT

VERSUS

SULTAN CONSTRUCTION CO. LTD.....RESPONDENT

RULING

The Plaintiff by this Chamber Summons dated 1st March 2007 and expressed to be brought under Section 3A of the Civil Procedure Act seeks Orders that the decretal amount paid into court be released to the Plaintiff.

The application is supported by an affidavit sworn by Mohamed Akram Khan on 1st March 2007 in which he avers that the Plaintiff had sued the Defendant in the Resident Magistrate's Court Nairobi in RMCCC No.4146 of 1984. Judgment was delivered on 30th April 1985 in favour of the Plaintiff. The Defendant was dissatisfied and preferred an appeal. The appeal was admitted but on condition that the Defendant deposits a sum of Sh.58,211/= in court.

The appeal was heard but was dismissed on 11th June 1993.

The Respondent was served but he did not file any papers to oppose the application. Mr. Mwangi for the applicant submitted that counsel for the Respondent had written him on 29th April 1996 in which he had stated that he had no objection for the cash deposited by the Defendant being released to the Plaintiff. He also forwarded to him the original cash deposit receipt No.A399394 dated 5th July 1985 to enable him to collect the deposit.

The application being not opposed, the same is allowed in terms of Prayers 1 and 2 of the Chamber Summons dated 22nd April 2004.

Dated and delivered at Nairobi this 17th day of July 2007.

J.L.A. OSIEMO

JUDGE