

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 934 of 2001

JOHN GODANA GUYOPLAINTIFF

V E R S U S

FOOD FOR THE HUNGURY INTERNATIONAL.....DEFENDANT

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

On 28th July, 2005 judgment was entered for the Plaintiff against the Defendant for the total sum of KShs. 1,605,066/00 plus costs and interest. On 2nd November 2005 the court granted stay of execution of decree pending appeal, subject to the Defendant depositing, within 30 days of that date, the principal sum awarded in the decree in an interest-earning account in the joint names of the counsels on record for the parties, in a reputable bank or financial institution.

The Defendant has now come back to court by notice of motion dated 22nd May, 2004 seeking an order to enlarge or extend the time within which the Defendant should make the deposit as ordered on 2nd November, 2005. The application is expressed to be brought under Order 21, rule 25, Order 20, rule 11(2) and Order 50 rule 1 of the Civil Procedure Rules (the Rules), and also under section 3A of the Civil Procedure Act, Cap. 21.

The grounds for the application stated on the face thereof are, *inter alia*, that the Defendant was not able to comply with the order within the time stipulated because it could then not raise the requisite funds, but that it now has the funds and can make the deposit as ordered. There is a supporting affidavit sworn by one MAURICE OMOLLO, who describes himself as the human resource development and administration manager of the Defendant. I have read the same.

The Plaintiff has opposed the application as set out in the grounds of opposition dated 8th June 2006. Those grounds are, *inter alia*, that the Defendant having not complied with the order of 2nd November, 2005, its application does not lie in law and equity.

I have considered the submissions of the learned counsels appearing. No authorities were cited. It was submitted for the Plaintiff that there has been inordinate delay in bringing this application, something that the Defendant denied. It was also submitted that apart from filing the notice of appeal, the Defendant has not done anything towards lodging the record of appeal before the Court of Appeal.

The order of 2nd November, 2005 was made in exercise of the court's discretion. When it became apparent to the Defendant that it would not be able to raise the principal sum awarded in the decree for deposit within the 30 days ordered by the court, the Defendant ought to have come back to court within that period for extension of time, or very soon after expiry of the 30 days. As it happened, the Defendant waited nearly six months after expiry of the 30 days to come to court. There is no explanation in the supporting affidavit why the application could not be filed earlier; I do not accept the explanation given from the bar by the Defendant's counsel.

There is another thing. There is no evidence of the efforts made by the Defendant to get funds from its donors; no letters or other solicitations are exhibited in the supporting affidavit. There is even no evidence of when the money was received by it. In these circumstances there is no justification at all to keep the Plaintiff from the fruits of his litigation. This is a money decree, and he should now be allowed to enjoy it.

In the result, I do not find any merit in the application, and I must refuse it. It is hereby dismissed with costs to the Plaintiff. There will be orders accordingly.

DATED AT NAIROBI THIS 11TH DAY OF SEPTEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 14TH DAY OF SEPTEMBER, 2007