



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Civil Case 238 of 1999**

**BAKARI ALI KASMANI.....PLAINTIFF**  
**VERSUS**  
**STANLEY MUEMA WANGUYE.....DEFENDANT**

**RULING**

The Notice of Motion dated 4-10-04 was filed by the defendant citing several provisions of law. SS 3A, 34, 63 (e) CPA and Order 19 rr. 1, 2, 020 rr.11(1) (2), 16, 18 and O 21 r. 25 CPR. The substantive prayers were:

- (1) That Judgement following this court's ruling of 28-7-04 be stayed until the counterclaim herein is finally heard and determined.
- (2) That in the alternative the execution be stayed pending the ascertainment of the amount actually due and owing under the judgement.

Mr. Muthama argued this application relying on the supporting affidavit plus annextures. These included letter and cheques said to have been paid to the plaintiff/respondent in this case. He also considered the plaintiff's replying affidavit with annextures. His focus and thrust of submission was that there was no clear picture as to what credits the plaintiff was to give to the defendant following the ruling of 28-7-04 because there were cash and cheque payments but denied. In arguing that some payments had been made since the suit was instituted, it transpired that an error was committed when some cheques pre-dating the filing of the suit on 2-12-99 were included.

Mr. Omollo's argument was that the judgement was based on the defendant's affidavit sworn on 16-3-03 admitting owing shs. 1,390,000/-. That three (3) cheques totaling shs. 580,000/= were paid and acknowledged – after the suit was filed. That a third one for shs. 150,000/= (dated 7-12-2000) was paid but received by the defendant's lawyers on 11-4-2001 and that according to the judgment sum the defendant still owed shs. 810,000/- only. That because the court rules that his counterclaim was a separate suit, and he would see what to do with it, he should not delay to pay as he seeks. He should pay up now or if the court grants him his wish the defendant should deposit the whole judgement sum plus interest and costs in the advocate's joint income-earning account.

Mr. Muthama simply responded that the costs and interest should await the outcome of the counterclaim.

Having heard counsel and considering the ruling of 28-7-04 this court's decision is that the applicant do deposit in a joint income-earning account in the joint names of the judgment shs. 810,000/= in the next 30 days. In default the plaintiff to move to execute for the sum even before taxation of costs. Interest will abide the outcome of the remaining part of the proceedings herein.

Costs of this application to the plaintiff.

Orders accordingly.

Delivered on 25-5-2005.

**J. MWERA**

**JUDGE**

**25-5-2005**