



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE 1098 OF 2001

MON-CONS GENERAL CONTRACTORS LIMITED.....PLAINTIFF

VERSUS

BINLAW CONSTRUCTION CO. LIMITED.....1ST DEFENDANT
JOHN MOGUCHE ZACHARIA2ND DEFENDANT

R U L I N G

A decree was passed herein in favour of the plaintiff against the defendant's on 11th April 2002 for kshs 1, 754, 545. 36 together with interest at the rate of 19% per annum from 29th March 2001 until payment in full, plus costs of the suit.

By an execution application of February 2004 the decretal amount was shown as kshs 2, 731, 214. 74.

The defendant's paid to an auctioneer, executing the decree, kshs 2, 731, 214 on or about 12th July 2004.

The plaintiff by its letter dated 12th July 2004, indicated to the defence counsel, that the amount paid by the defendant was what was due as at August 2003. The plaintiff therefore stated that the defendant was still indebted to the plaintiff kshs 471, 354. 70 as at 12th July 2004, which amount continued to attract interest at the rate of 19% per annum.

The defendant's were aggrieved by this information and following plaintiff's attempt to execute for the aforesaid balance, the defendants moved this court by their Notice of Motion dated 18th August 2005, which is now the subject of this ruling.

The Notice of Motion seeks, an order that; the court does declare that the decree herein, has been satisfied in full and that the defendant be discharged.

The ruling of the application would have been made simple, if the decree holder had, in its response to the application, supplied a table of the amount that was due, when judgment was entered, and a running account of amount paid, the application of interest and finally balance allegedly due from the defendants. In view of lack of such a statement, the court will require the registry to work out the amount due, if any, after credit of kshs 2, 731, 214/-. Once such a statement is prepared by the registry the parties will be asked to respond to the same, by submissions when the court will proceed to give a ruling on the defendant's application.

The orders of this court are as follows: -

- (1) That the registry will within 14 days from today prepare a statement of the decretal amount due, in so doing the registry will give credit to the defendant of the payment made on 12th July 2004 of kshs 2, 731, 214.**
- (2) That the parties may be supplied with a copy of such a statement on payment of the necessary fees.**
- (3) The parties, at the reading of this ruling will be given a date to make further submission on the defendant's Notice of Motion dated 18th August 2005.**

Dated and delivered this 31st day of October 2005.

**MARY KASANGO
JUDGE**