

Editorial Note

Civil Procedure

- Power of the Deputy Registrar
- Court include Deputy Registrar in his ministerial capacity

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 2098 OF 1993**

M & E CONSULTING ENGINEERS PLAINTIFF

VERSUS

LAKE BASIC DEVELOPMENT

AUTHORITY DEFENDANT

RULING

This is an application expressed to be grounded on sections 3A 99 and 100 of the Civil Procedure Act. It seeks to have the warrants of attachment and sale issued on 30th March 2004 corrected. The error to be corrected is that the decretal amount as per the warrants is Kshs 4,043 500 instead of 850,000.

A preliminary point has been raised by the respondent on two grounds:-

- (i.) that I do not have jurisdiction to hear the matter.
- (ii) the applicants advocates are not properly on record

because they had at some point in the past abandoned the matter and they had not sought the required leave.

I would like to address the second objection first. I have perused the proceedings and there is no evidence that the applicants advocates did file a notice of change or an order ceasing to act. I therefore see no legal or procedural basis for this objection and the same is rejected.

Turning to the first objection concerning my jurisdiction it is clear from the record that there is a decree in place and on 2nd April 2003 a judgment by consent on costs of 2 million was entered. This matter has therefore come to finality.

The application has invoked sections 99 and 100 of the Civil Procedure Act. Since this is not an application for review of the decree the jurisdiction of the court can only extend to correcting any arithmetical error and since the alleged error is reflected in the warrant of attachment and sale Order 21 of the civil Procedure Rules would in the opinion of the court regulate the position because warrants are procedurally issued under that order.

Under Order 48 R 5(b)(x) the Deputy Registrar has jurisdiction to hear and determine applications made under Order 21 except under rules 28, 57 and 79. It follows that since warrants are issued under Order 21 an application to correct them must be made under Order 21. Order 21 makes no specific provision on how the jurisdiction to correct errors may be invoked but in the absence of a specific provision it has to be by way of a Notice of Motion. The powers conferred upon the court under S 99 and 100 of the Civil Procedure Act are conferred on the court in exercise of its civil jurisdiction and the court does include the Deputy registrar in the specific areas where jurisdiction has been conferred on him. For

this reason I find and hold that the application is not properly before me although the application is in the form required under Order 21 of the Civil Procedure Rules. Without any discourtesy to by the counsels I see no relevance of the cases cited in view of the above analysis. I therefore order that the application be placed before the Deputy Registrar for hearing before him. Pending final determination by him I invoke the inherent powers of this court to prevent the ends of justice from being defeated, by granting a temporary order staying execution of the warrants or any attachment and sale of the judgment debtors assets until the final determination of the application by the Deputy Registrar.

I award the costs of the objection to the respondent in any event.

It is so ordered.

DATED and delivered this 28th May 2004.

J G NYAMU