



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO.286 OF 2000

SCHENKER & CO. (E.A.) LTD. PLAINTIFF

VERSUS

WES EXPORT (E.P.Z.) LIMITED DEFENDANT

RULING

The application dated 20/1/04 is supported by the Affidavit of Lenard Maingi, of even date and on the grounds that the Decree was given on 26/4/00, Objector's goods attached on 24/11/00; the Objector filed objection proceedings which were dismissed on 16/10/00; whereupon the Objector applied and obtained a Stay of Execution of the decree pending an appeal, on 20/12/00. The Objector has not pursued the appeal ever since despite typed proceedings having been ready for collection on 28/5/03; and that under the circumstances, the Plaintiff is entitled to the fruits of the decree herein.

The application seeks orders that the Court review, under Orders 44 rule 1; Order 50 rule 1 of the Civil Procedure Rules, and Sections 3A and 80 of the Civil Procedure Act, the Order of 20/12/00 granting the Objector a Stay pending appeal on condition of payment of Shs.250,000/= and set aside the said Order.

The applicant also prays for orders that the sum of Shs.250,000/= and interest accrued thereon in Account No.3100434007 in the names of Nyachae & Co. Advocates/Kiplagat and Associates, joint account at Credit Bank Ltd., Koinange Street Branch, be released to the Plaintiff's Counsel M/s Okoth & Kiplagat, Advocates.

Upon perusal of the pleadings herein, especially the Supporting Affidavit of Lenard Maingi and the annexures thereto, and the Chamber Summons of M/s Nyachae & Co. Advocates, dated 2/3/04 seeking leave to withdraw from acting for the Objector herein, I have come to the conclusions that:-

(i) The Objector has absolutely lost interest in pursuing the intended appeal based on the order of Stay herein was granted. The lapse between 19/10/00 when the Objector filed the Notice of Appeal and 20/1/04 when this Notice of Motion was filed is not only inordinately long but also clearly prejudicial to the plaintiff's entitlement to justice and interests.

(ii) The withdrawal of the Objector's Counsel from further representation of the Objector herein for lack of instructions was the last straw of any appeal being filed. That being the case, the basis for the Stay of Execution of the order of 20/12/00 is no longer available.

(iii) Despite service, the Objector has filed no papers in response to this application.

Accordingly, I grant the orders prayed for in this Notice of Motion, namely:

- 1. Set aside the order of 20/12/00 which granted the Objector a Stay of Execution pending appeal;**
- 2. Order release of Kshs.250,000/= together with interest accrued thereon in the joint account No.3100434007 in the names of Nyachae & Co. Advocates/Kiplagat & Associates, at the Credit Bank Ltd, Koinange Street Branch, to the plaintiff's Counsel M/s Okoth & Kiplagat, Advocates.**
- 3. I also order that the Objector do pay costs of this application.**

DATED and delivered at Nairobi this 20th day of July, 2004.

O.K. MUTUNGI

JUDGE