

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 115 OF 1998

KERSAM LTD. & 15 OTHERS.....PLAINTIFFS

VERSUS

AFRICAN BANKING CO-OPERATION & TWO OTHERSDEFENDANTS

R U L I N G

ON PRELIMINARY POINT

The application herein is brought under Order XX rule 7(4) Civil Procedure Code for settling decree.

This is necessitated by the orders made in this case on appeal by court of Appeal. The intention is to amend the original decree to conform to the orders issued by that court. Decrees on appeal are drawn under Order 41 rule 28 which provides that such decrees shall be drawn under the provisions of rules 6,7, & 8 of Order 20 Civil Procedure Code.

Mr. Khanna for respondent has raised preliminary objection that this court has no jurisdiction to resettle the decree. The jurisdiction lies on the court of appeal. The order made by that court is already settled and sealed by the court. I am inclined to agree with Mr. Khanna. The draft decree after the court of appeal judgement should be presented to the court of appeal for settlement. I therefore uphold the objection and dismiss the application for want of jurisdiction.

Dated 23rd August, 2002.

HON. J. KHAMINWA

LADY COMMISSIONER

MR. NASSIR MOHAMMED

I say I am dissatisfied with the ruling.

Court has shown its in impotence although it has power. My client has failed to execute decree for two years. I apply for this file to be placed before the Chief Justice for directions.

HON. J. KHAMINWA

LADY COMMISSIONER

COURT

At the request of counsel, I direct that the Deputy Registrar do place this file before the Chief Justice for directions.

HON. KHAMINWA

LADY COMMISSIONER