



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2788 OF 1997

SAMUEL OTIENO AJODE.....PLAINTIFF

VERSUS

PAN AFRICA INSURANCE CO.....DEFENDANT

RULING

This is the defendants application dated 2.11.98 for an order that the order made on the Ruling rendered on 2.7.98 and the Decree issued on 10.4.98 be reviewed. The applicant also prays that an order be made for the re-working of the figures on the said decree issued on 10.4.98. The application is supported by the affidavit of Mr. Bessie Ndukwe Ambunya, the claims Manager of the defendant, in which he attempts to show in paras 2, 3, 4, 5, 6 and 7 that the decretal sum as calculated is erroneous and led defendant to overpay plaintiff by Kshs 193,893/45. The application and the submissions of the applicants counsel question the correctness of the decretal sum as computed.

The application and counsels submissions do not question the correctness of the Ruling of 2.7.98. By that Ruling, court merely dismissed with costs the defendants application to set aside the exparte judgment. The application and the counsel's submission do not show that applicant is seeking a review of the Ruling dated 2.7.98. It seems to me that applicant is merely asking the court to correct the errors on the decree and reduce the decretal sum by shs 193,893/45 which should be refunded to the applicant.

This was a declaratory suit. Plaintiff had obtained judgment against the insured as pleaded in paras 4 and 5 of the plaint. As plaintiff shows in para 4 of the plaint he was awarded shs 493,000 together with costs agreed at shs 80,000 and interest at court rates, which was shs 53,500 as at 17.8.97. Plaintiff prayed for a declaration that defendant was liable to the total of shs 625,300 inclusive of costs and further interest from 17.8.97 till payment in full. Plaintiff also prayed for costs of the suit and interest at court rates. When Defendant failed to enter appearance judgment was entered for the plaintiff plus costs which were assessed by Deputy Registrar at shs 47,945 pursuant to Rule 68 of Schedule VIII (a) of Advocates Remuneration Order. A Decree was issued on 21.4.98 for shs 626, 3000 being the principal account and shs 50,104 being interest at 12% p.a from 17.8.97 to 9.4.98. The total decretal sum was shs 657,665 plus costs of shs 47,945 plus further interest and court fees. There is a working paper showing how the Deputy Registrar arrived at the total decretal sum of shs 728,538/45, which appear, on the warrant of attachment given on 8.7.98.

The calculations in the affidavit of Mr. Bessie Ndukwe Ambunya are based on the erroneous assumption that plaintiff was only entitled to shs 493,000 awarded by the lower court as damages. Plaintiff was entitled, as he did, to add the costs of shs 80,000 and interest accrued of shs 53,300 to the damages awarded to make a total of shs 626,300 which he claimed in the plaint. After judgment was

entered for that sum with costs and interest, plaintiff was entitled to add the costs and the interest accrued as at the time the warrant of attachment was given.

I have considered the method of computation in Mr. Ambaya's affidavit against the computation of the decretal sum by the Deputy Registrar.

I am satisfied that there is no error in the computation of the decretal sum at shs 728,538/45. Plaintiffs counsel says that she has no instructions from plaintiff as she paid the sums recovered to plaintiff.

Plaintiff's counsel is not therefore entitled to the costs of the application.

For above reasons, the application has no merit and is dismissed with no orders as to costs.

E. M. Githinji

Judge

14.11.2001

Mr. Gaturu for Applicant present

Plaintiffs counsel absent

Mr. Gaturu

I apply for certified copies of the proceedings and Ruling. I also apply for leave to appeal.

Order:

1. Leave to appeal if required is given
2. Proceedings and Ruling to be typed and supplied as prayed.

E. M. Githinji

Judge