



Specialised Engineering Company Ltd (in Receivership) v Gautama (As the Legal Representative & Executor of the Estate of Satish Gautama – Deceased); M-Oriental Commercial Bank & another (Interested Parties) (Commercial Case 497 of 2011) [2025] KEHC 3030 (KLR) (Commercial and Tax) (17 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 497 OF 2011**

**A MABEYA, J
MARCH 17, 2025**

BETWEEN

SPECIALISED ENGINEERING COMPANY LTD (IN RECEIVERSHIP) PLAINTIFF

AND

ASHOK KUMAR GAUTAMA (AS THE LEGAL REPRESENTATIVE & EXECUTOR OF THE ESTATE OF SATISH GAUTAMA – DECEASED) DEFENDANT

AND

**M-ORIENTAL COMMERCIAL BANK INTERESTED PARTY
DEVESH A. PATEL INTERESTED PARTY**

RULING

1. This ruling determines the application dated 15/01/2024 brought by the applicant under sections 1A, 1B and 3A of the [Civil Procedure Act](#) as well as Order 1 Rule 1 of the Civil Procedure Rules 2010.
2. The applicant sought the following orders: -
 - a. This Honourable Court be pleased to give an order that the Plaintiff/Respondent having no claim or interest in the funds deposited and held in Bank Account No. 13053XXXXX at KCB Bank Limited Hurlingham branch, the name of the Plaintiff's advocates, Kale Maina & Bundotich Advocates be removed as one of the holders of and signatories thereto.



- b. This Honourable Court be pleased to issue a declaration that the claim between the Plaintiff/ Respondent and the Defendant/Applicant having been fully and finally settled, the 2nd Interested Party has no claim on the funds held in Bank Account No. 13053XXXXXX at KCB Bank Limited.
 - c. Upon Prayer No. 3 being granted, an order be given that the said 2nd Interested Party's Advocates, Messrs. Stanley Henry Advocates be removed as one of the holders of and signatories thereto of the said Bank Account No. 13053XXXXXX at KCB Bank Limited.
 - d. An order be given that the stay of execution pending appeal given in favour of M-Oriental Commercial Bank having lapsed on 20th October 2023, the said Bank's Advocates, Messrs. Kiprop & Company Advocates be removed as joint account holders in Bank Account No. 13053XXXXXX at KCB Bank Limited.
 - e. A declaration be issued that the Defendant/Applicant is entitled to the sums in Bank Account No. 13053XXXXXX at KCB Limited plus accrued interest.
 - f. An order given that all sums held in Account No. 13053XXXXXX at KCB Bank be released to the Defendant's Advocates, Kimamo Kuria Advocates.
 - g. Such further or other orders as this Honourable Court may deem fit and just to grant.
3. The application was grounded on the grounds set out in the body of the Motion and in the supporting affidavit of Andrew Mmbogori counsel for the applicant.
 4. The applicant contended that by an order given on the 12/2/2012 in ELRC 171 of 2012, an amount of Kshs. 27,454,000/= was preserved in account no. 00700XXXXXX held by the 1st Interested Party. That by December, 2016 the amount had accrued interest of Kshs. 10,689,883/=. That by a consent entered into by the parties on the 13/12/2012, they separated the original amount in account 00700XXXXXX and left the accrued interest therein. However, that on the 31/12/2016, the 1st interested party debited the entire interest sum from the account irregularly and without leave of court.
 5. It was contended by the applicant that on 24/9/2019, Tuiyot J made a ruling ordering the interested party to reverse the irregular debit of the interest amount. That being aggrieved by the said ruling, the 1st interested party filed an application dated 4/10/2019 seeking leave to appeal against that ruling and a stay pending appeal.
 6. By a ruling made on the 25/10/2022, Majanja J granted the 1st interested party leave to appeal as well as a conditional stay of the order on the condition that the 1st interested party deposits Kshs. 15,000,000/= in a joint interest account in the name of the advocates for the plaintiff, the defendant and the bank within 14 days or in the alternative, to deposit the same in Court upon which the stay of the order shall come into play for a period of 1 year unless it is extended by the Court or Court of Appeal.
 7. That the parties caused the amount to be deposited in Bank Account No. 13053XXXXXX at KCB Bank Limited. That in a subsequent ruling by Majanja J on the 21/7/2023, the Judge found that the 2nd interested party had no personal claim on any of the monies subject matter of the suit and as such there was no reason for his advocates to continue being joint holders in KCB Bank account no. 13053XXXXXX.
 8. It was further contended that the plaintiff/respondent and the defendant/applicant having fully and finally settled their respective claims against each other, the plaintiff/respondent executed a consent dated 3/5/2023 relinquishing any claim to the monies held to the monies held in KCB Bank account no. 13053XXXXXX.



9. It was further contended that the stay of execution pending appeal granted in favour of the 1st interested party having lapsed on 25/10/2023, there was no reason for the Bank's advocates to be maintained as account holders in the KCB Bank account and that having failed to prosecute its appeal for more than a year, the applicant was entitled to the orders sought.
10. The 1st Interested Party respondent vide a replying affidavit sworn by its credit manager, Wilfred Machini. He deposed that the 1st interested party was not a primary party in the suit hence exempted from participating in the proceedings thus the consent between the plaintiff and defendant that settled the dispute between them was not binding on it.
11. That the interested party had complied with the orders of 25/10/2022 made by Majanja J. That the order by Majanja J did not state what happens to the funds in the event the time for appeal lapses or that the parties be removed as joint account holders as alleged by the applicant. That the order did not state whether the money should be reversed back to the 1st interested party or any other party.
12. Mr. Machini deposed that the applicant had not filed an affidavit to state that the funds deposited by the 1st Interested Party at KCB Bank were his and how the same would be disbursed to him for onward transmission to the beneficiaries of the estate of the deceased. That the impression created by the applicant's advocate, it was depicted that the funds at KCB Bank belonged to the advocate rather than the applicant who had not participated from the proceedings judging from the fact that it was the advocate who swore the various affidavits.
13. It was deposed that the interested party had deposited the amount of Kshs. 15,000,000/= at KCB Bank as ordered by Court but that the amount was not justified as the amount ordered by Tuiyot J was Kshs. 10,689,883/= hence the additional difference of Kshs. 5,000,000 was not justified and ought to be returned to the interested party in the interests of justice.
14. In rejoinder, Mr. Mmbogori, counsel for the applicant swore a further affidavit on the 28/10/2024 in which he deposed that, the 1st interested party's allegation that it was not notified of the primary parties' consent to bring the matter to a close was untrue. He stated that in order for him to access and receive the funds in question, it was necessary that the orders sought be granted to remove the 1st interested party as signatories to the account to enable him withdraw the funds for the benefit of the applicant.
15. In his submissions for the applicants, Mr. Mmbogori submitted that it was extremely disingenuous for the 1st Interested Party to now, as an afterthought, raise hue and cry that the order to pay Kshs 15,000,000/= was unjustified all the while their Advocates were in Court when the Order was given and clearly instructed their client to comply with the same without complaint or argument and further that the said order was still valid as there was no appeal against it.
16. That the 1st Interested Party having fully and immediately complied with Majanja's J Orders without seeking an appeal, stay or review of the same, the said order was and remains in force and the 1st Interested Party cannot now seek to review or set aside the same through an Affidavit sworn by a deponent who was not in Court when the Order was given.
17. As regards the 2nd Interested Party, Mr. Mmbogori submitted that his status as a director or former director of the Plaintiff did not entitle him to make personal claims on monies owing to the Plaintiff. That that was a fact that was noted by Majanja J who dismissed the 2nd Interested Party's claim and refused to grant leave to appeal on the grounds that the 2nd Interested Party's appeal would have no prospects of success.



18. In urging the court to grant the applicant the orders sought, Mr. Mmbogori submitted that a party's funds cannot be held in limbo indefinitely, particularly where orders of stay pending appeal have since lapsed and the party in whose favour such stay was given shows no interest in pursuing their appeal as litigation must come to an end.
19. On its part, the 1st interested party submitted that Majanja J did not determine the issue of interest but only ordered it to deposit the money in the stated account pending the hearing and determination of the appeal. That the Court could not determine the interest accrued as Tuiyot J had made an order of reversal of Kshs. 10,689,883 thus the same was varied by the order by Majanja J.
20. The 1st interested party urged the Court to confirm the orders of Tuiyot J and order release of Kshs. 10,689,883/= only to the applicant.
21. I have considered the rival contestations of the respective parties. The applicant has moved this Court to exercise its discretion and grant the orders sought. Discretion vested in the Court is dependent upon various circumstances, which the court has to consider among them the need to do real and substantial justice to the parties to the suit and must be exercised in accordance with sound and reasonable judicial principles.
22. The applicant sought to have the funds held in Account Number 13053XXXXXX at KCB Bank released to him. There is no dispute that on 24/9/2019, Tuiyot J ordered the 1st interested party to reverse the irregular debit interest amount of Kshs. 10, 689,883/= to the applicant.
23. Aggrieved thereby, the 1st interested party applied for leave to appeal vide an application dated 4/10/2019. That application was settled by Majanja J on the 25/10/2022. He granted the 1st interested party leave to appeal as well as a conditional stay on the condition that the 1st interested party deposited Kshs. 15,000,000/= in a joint interest account in the name of the advocates for the plaintiff, the defendant and the bank within 14 days.
24. It is noted that the order of Majanja J of 25/10/2022 has not been set aside, varied, reviewed or appealed against. As such it is still a valid order of the Court thus the 1st interested party's submissions that it varied the orders of Tuiyot J are without merit. The question therefore for determination is whether the orders sought should be granted.
25. There was no dispute between the parties that the primary dispute was between the applicant and the plaintiff. This dispute was settled vide a consent dated 3/5/2023. The order of Tuiyot J for the interested party to reverse the irregular debit interest amount of Kshs. 10, 689,883/= to the applicant had not been appealed against. Neither has Majanja J's order of 25/10/2022 been appealed.
26. Further, this Court takes judicial notice of the fact that monies deposited in an interest earning account automatically accrue interest and as such, both the original amount plus deposit belong to the original owner of the funds.
27. In the circumstances, this Court, in the interest of justice, has no choice but to grant the applicant the orders sought. There has been no evidence presented by the 1st interested party to contradict the applicant's case.
28. The upshot of the above is that, I find the application to be meritorious. I allow the same as follows: -
 - a. That the name of the Plaintiff's advocates, Kale Maina & Bundotich Advocates is hereby removed as one of the holders of and signatories in Bank Account No. 13053XXXXXX at KCB Bank Limited.



- b. That the 2nd Interested Party has no claim on the funds held in Bank Account No. 13053XXXXXX at KCB Bank Limited and thus his Advocates, Messrs. Stanley Henry Advocates are hereby removed as one of the holders of and signatories thereto of the said Bank Account No. 13053XXXXXX at KCB Bank Limited.
- c. That the 1st Interested Party's Advocates, Messrs. Kiprop & Company Advocates are hereby removed as joint account holders in Bank Account No. 13053XXXXXX at KCB Bank Limited.
- d. That the Applicant is entitled to the sums in Bank Account No. 13053XXXXXX at KCB Limited and an order is given that all sums held in Account No. 13053XXXXXX at KCB Bank be released to the Defendant's Advocates, Kimamo Kuria Advocates.
- e. That the costs of this application shall be borne by the 1st interested party.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT KISUMU
THIS 17TH DAY OF MARCH, 2025.**

A. MABEYA, FCI Arb

JUDGE

