



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT 143 OF 2014

DIRECTLINE ASSURANCE COMPANY LIMITED...PLAINTIFF

-VERSUS-

JAMII BORA BANK LIMITED.....1ST DEFENDANT

ALUIYA OMARI AHMED.....2ND DEFENDANT

R U L I N G

1. The Plaintiff Commenced This Suit By Way Of A Plaint Dated 11/04/2014 And Amended On 27/05/2014. It Claimed, *Inter Alia*, A Mandatory Injunction Compelling The 1st Defendant To Credit A Sum Of Kshs. 20,960,000/- Into The Plaintiff's Account Together With Interest At Court Rate.
2. On 26/09/2014, Ogola J Issued A Temporary Injunction Directing The 1st Defendant To Deposit Kshs. 20,960,000/- That Had Been Deducted From The Plaintiff's Account Into An Interest Earning Account Pending The Hearing And Determination Of The Suit. On 02/09/2020, Judgment Was Entered In Favor Of The Plaintiff Granting A Mandatory Injunction Directed At The 1st Defendant To Credit The Plaintiff's Account With The Said Sum Of Kshs. 20,960,000/- Together With Accrued Interest From 15/08/2014.
3. The 1st Defendant Obtained A 30day Stay Of Execution Of The Said Judgment. The Stay Expired On 2/10/2020 And There Was No Compliance With The Judgment.
4. In View Thereof, By A Motion On Notice Dated 7/10/2020 Brought Under ***Order 51, Rule 1 Of The Civil Procedure Rules, Sections 1a, 1b And 3a Of The Civil Procedure Act***, The Plaintiff Applied For An Order For The Immediate Release By The 1st Defendant Of The Said Sum Of Kshs. 20,960,000/- Together With The Total Interest Accrued Thereon Held By The Defendant In Fdr 0292065245.
5. That Application Was Supported By The Affidavit Of **Pauline Waruhiu** Sworn On 7/10/2020. The Deponent Reiterated The Foregoing Background And Urged That The Application Be Allowed. She Produced Documents In Support Of The Application.
6. The Defendants Did Not File Any Response To The Application. The Plaintiff Filed Its Submissions Which Are On Record And Which The Court Has Considered.
7. It Was The Plaintiff's Submission That Once A Final Determination Has Been Made In A Suit, Any Conditional Interlocutory Order Made In The Suit Lapses. That In This Regard, The Interlocutory Order Made On 26/09/2014 Directing The 1st Defendant To Transfer The Sum Of Ksh.20,960,000/- From The Plaintiff's Account Into An Interest Earning Account Lapsed When Judgment Was Entered By Nzioka J. On 02/09/2020.
8. The Plaintiff Relied On The Court Of Appeal Decision In **Eastland Hotel Limited V Wafula Simiyu & Co Advocates [2015] Eklr** Wherein It Was Held: -

"It Is Our Considered View That When An Appeal Is Heard And Determined, The Effect Of The Judgment Is To Lapse Any Interlocutory Orders That Were Made Prior To The Delivery Of The Final Judgment. We Find That The Conditional Stay Of Execution And The Order Directing The Deposit Of Kshs.5,000,000/= In A Joint Account Lapsed With The Delivery Of The Judgment Of This Court On 24th October 2014; A Conditional Deposit Is Discharged And Becomes Due And Repayable Upon

Fulfilment Of The Condition.”

9. The Plaintiff Therefore Submitted That The Application Be Allowed As Prayed.

10. I Have Seen The Order Made By Ogola J On 26/9/2014. It Was A Conditional Order To The Effect That The 1st Defendant Do Deduct From The Plaintiff's Deposit Held In Fdr Receipt No. 0292062788 A Sum Of Kshs. 20,960,000/- And Hold The Same In A Special Interest Earning Account. I Have Also Seen The Judgment Of Nzioka J Made On 2/9/2020 Whereby The Plaintiff Was Successful.

11. With The Said Judgment Of Nzioka J, The Interlocutory Order Of Ogola J Lapsed. That Order Was To Subsist Until The Determination Of The Suit Which Was Determined As Such By The Judgment Of 2/9/2020.

12. In View Of The Foregoing, I Find The Plaintiff's Application To Be Meritorious And I Allow The Same In Terms Of Prayer 2 Thereof. The Plaintiff Will Also Have The Costs Of The Application As It Was Successful In Terms Of ***Section 27 Of The Civil Procedure Act.***

It Is So Ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH, 2021.

A. MABEYA, FCI ARB

JUDGE