



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 713 OF 2009

KAMAHUHA LIMITED.....APPELLANT/APPLICANT

VERSUS

GEORGE NJOROGE NJERI & MERCY WANJIRU NJERI

(Suing as the legal representatives of the estate of

SAMUEL NDEGWA NJERI-Deceased.....RESPONDENTS

RULING

1. This ruling is precipitated by the Notice of Motion dated 28th October, 2020 brought by the appellant/applicant and sustained by the grounds set out on its face and the facts stated in the affidavit of Sarah Weru, the Senior Legal Officer of the applicant. The order sought is that of a release of the decretal sum of Kshs.800,000/= previously deposited in court by the applicant on 6th April, 2010.
2. The Motion is unopposed since the record shows that the respondents did not file any documents to oppose it despite being given time to do so by this court.
3. At the hearing of the Motion, the applicant chose to rely on the affidavit evidence.
4. I have considered both the grounds set out on the face of the Motion and the facts deponed in the supporting affidavit.
5. The respondents herein filed a fatal accident claim against the applicant before the trial court on behalf of the estate of Samuel Ndegwa Njeri ("the deceased") and sought for damages plus costs of the suit and interest thereon. The suit was defended by the applicant.
6. The record shows that upon hearing the parties, the trial court found the applicant 100% vicariously liable and awarded the respondents a sum of Kshs.1,083,330/= which was later reduced to a sum of Kshs.800,000/=.
7. Being dissatisfied with the trial court's decision, the applicant lodged an appeal against the same and sought an order for a stay of execution pending appeal, which this stay was granted by this court vide the ruling delivered on 7th April, 2010 on the condition that the applicant deposits the decretal sum of Kshs.800,000/= in court. It is apparent from the record that the applicant complied with the above condition.
8. Upon hearing the parties on the substantive appeal, this court in its judgment delivered on 5th July, 2016 allowed the appeal and consequently set aside the impugned judgment, thereby ordering that the suit be retried by a different magistrate of competent jurisdiction.
9. There is nothing to indicate that an appeal has been filed or is in the process of being filed against the judgment of this court. As such, I am satisfied that applicant is lawfully entitled to the decretal sum.
10. The upshot therefore is that the Motion dated 28th October, 2020 is meritorious and is allowed as prayed by ordering that the decretal sum of Kshs.800,000/= deposited in court on 6th April, 2010 be released to the applicant within the next 30 days. Upon considering the nature of the Motion, I find that a fair order on costs would be for each party to bear its own costs.

Dated, Signed and Delivered at Nairobi this 13th day of May, 2021.

A. MBOGHOLI MSAGHA

JUDGE

In the presence of:

Ms. Sosion holding brief Mrs Omondi for the Appellant/Applicant

Ms. Sagara holding brief for Mr. Kebongo for the Respondents