



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NO. 226 OF 2013

JOSEPH GITAU NGANGA.....APPELLANT

-VERSUS-

MARY NGAGUTHI MUNGA

(SUING AS PERSONAL REPRESENTATIVE OF

DAMSON NDERITU MUNGA (DECEASED).....RESPONDENT

RULING

1. This is a ruling on application dated 20th January, 2020, brought under **Section 3A, the Civil Procedure Rules**, and under **Order 51 Rule 1 (1) of the Civil Procedure Act**. It seeks the following Orders:-

a) That a sum of Kshs. 283,070/= being the decretal sum together with accrued interest in the sum of Kshs 93,502.20/= plus costs in the sum of Kshs. 89,020/= adding up to the sum of Kshs. 465,862.20/= be released to the firm of Wahito & Company Advocates in settlement of this matter from Account No. [...] in the name of Wahito & Co. Advocates and Waiganjo & Co. Advocates at CFC Stanbic Bank, Harambee Avenue Branch.

b) That the balance thereof be released to the firm of Waiganjo & Company Advocates.

c) Costs be provided for.

2. Grounds on the face of the application are that kshs 482,500 was deposited in a joint interest earning account in the names of **Wahito & Company Advocates** and **Waiganjo & Company Advocates** pending hearing and determination of the appeal.

3. That the said appeal has been heard and judgment entered in favour of the respondent on 23rd May 2019 where the respondent was awarded kshs 283,340 plus costs in the trial court.

4. That it is fair that the said sum of kshs 283,340 plus costs and interest in the sum of kshs 93,502.20 and cost in the sum of kshs 89,020 adding up to kshs 65,862.20 being part of the deposit be released to the firm of **Wahito & Company Advocates** being payment of the judgment herein.

5. The Application is supported by the Affidavit **Mary Nyaguthii Munga**. She restated grounds on the face of the application.

6. The applicant submitted that the appeal arose from **Naivasha PMCC No. 132 of 2006** where the respondent sued the appellant for general and special damages following the Dearth of **Danson Nderitu Mungai** who died after a collision with the appellant's motor vehicle registration No. KAG 068P. The trial court in its judgment apportioned liability in the ratio of 5:95 in favor of the respondent and was awarded damages to the tune of Kshs.766,764/=. The appellant being aggrieved by the said judgment appealed to this court. The court analyzed submissions by various counsels and its judgment: -

a) Allowed the appeal on liability, and apportioned liability to the ratio of 50:50

b) Quantum was assessed as follows:

i. pain and Suffering.....Kshs. 10,000/=

ii. Loss of Expectations of life.....Kshs. 60,000/=

iii. Special Damages.....Kshs. 27,120/=

iv. Loss of Dependency.....Kshs. 469,560/=

Grand total.....Kshs. 566,680/=

Less 50%.....Kshs. 408,560/=

NetKshs. 283,340/=

c) Judgment was set aside and judgment entered in favor of the Respondent in favor of the appellant in favor of Kshs. 283,340/= plus interest.

d) Costs of the trial court to the respondent/appellant.

e) Each party to bear their costs of the appeal.

7. Parties took directions that parties are to file written submissions on the issue of costs and interest.

8. Counsel for the appellant never filed a replying affidavit nor submissions in response to this application and instead choose to rely on paragraph 8(3) of this courts judgment.

9. It is the applicant's submission that she is entitled to a portion of the interest earned in the joint account in respect of the sum of Kshs. 283,340/= from the time when the amount was deposited until when the same was released.

10. She submitted that as per the court's judgment the amount due and owing to the applicant was Kshs.372,090/= together with interest,= and it is only fair and just that the balance owing to the respondent/applicant is paid out to her from the joint account.

11. She further submitted that her application is unopposed and thus the orders sought to be granted. She relied on the case of **Peter Baraza Rababo vs Nation Newspapers Limited (2017) eKLR** where the court ruled that **"interest earned in the joint account for the parties be shared in the ratio and percentage of the award as determined by this court from the date of deposit until payment in full."**

12. What is in issue is **whether the applicant is entitled to a share of the interest earned in the sums deposited in a joint interest earning account.**

13. I note from my judgment that I ordered interest on kshs 283,340 for the date of the judgment. I however note that I had earlier ordered that decretal amount be deposited in a joint interest earning account. I do agree with the decision above that interest earned in a joint interest earning account should be shared between the parties in the ration granted by the court from the date of deposit. In my view the respondent should not loose out on the period between filing of appeal and determination of appeal.

14. The remainder of the amount should go to costs of the suit in the lower court and surplus to go to the appellant's Advocate.

15. In respect to cost assessment of costs should be done in the lower court file and dcreee drawn in that file.

16. **FINAL ORDERS**

1) **The respondent to benefit from interest earned in the deposit in the ration of liability awarded by this court.**

2) **Costs of this application to the applicant.**

RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 10TH DAY OF JUNE, 2021

.....

RACHEL NGETICH

JUDGE

In the presence of:

Lepikas - Court Assistant

Ms. Wangari Counsel for the Respondent

Ms. Wahito for applicant absent.