



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 72 OF 2018

KENYA MEDICAL RESEARCH INSTITUTE.....APPELLANT

VERSUS

WINNIE NYAKIO WAINAINA

(Suing as a widow and personal representative of

GEORGE WANAINA NGUGI (Deceased).....RESPONDENT

RULING

1. This is a ruling on two applications. The first is the motion dated 7th June 021 in which the appellant sought for the following orders:

a) Spent

b) That this honorable court be pleased to order the release of the monies held as security pending appeal of Kshs. 5,848,220 plus interest accrued thereon held in the jint names of Njogu and Ngugi and Ngetich, Chiira and associates for onward transmission to the applicant.

c) That the order be issued allowing the signatory representing the firm of Ngetich Chiira and Associates to sign solely for purposes of releasing the funds from the bank.

d) That the costs of this application be provided for.

2. The application is based on the grounds set out on the motion and is supported by the affidavit sworn by Magdaline C. Ngetich. The deponent of the supporting affidavit averred that the appellant filed this appeal and that prior to the hearing and determination of the appeal, this court made a conditional order of stay of execution of the judgement and decree of the lower court and further directed the appellant to deposit in a joint account the decretal sum of Kshs. 5,848,228 plus costs which was done.

3. She further deponed that the appeal was thereafter heard and determined on 13/11/2020 in which this court allowed the appellants' appeal and set aside the judgement of the lower court in CMCC 5818.

4. It is also averred that the respondent lodged and filed a Notice of Appeal on 6/11/2020 against the judgement but never prosecuted the Appeal.

5. In response to a letter dated 25/2/2021 counsel for the respondent assented to the release of the money from the account held between Njogu and Ngugi advocates and Ngetich Chiira and Associates at NCBA to the appellant's advocates firm save for the fact that she indicated that she was incapacitated as a result of an injury.

6. It is therefore necessary to make this application in order to allow the 2nd signatory to the account Ms. Magdaline Cherotich Ngetich counsel for the applicant to be allowed to transfer the funds to the firm without requiring the signature of the 1st signatory.

7. The second application is dated 1/7/2021 and filed by the respondent whereof the respondent sought for the firm of Messrs Njeru, Nyaga & Co. Advocates LLP to be placed on the record for the respondent in place of Messrs Njogu & Ngugi Advocates.

8. The application is supported by the affidavit of Martin Njeru Nyaga who deposed that sometimes in December 2020 the respondent instructed him to take over the matter after judgement had been rendered. The respondent indicated that the advocate that was appointed by her husband was not keen on appraising her over the matter.

9. On examination of the record this court notes that the applications herein were not opposed by either party. This court also notes that on 13/11/2020 the court allowed the appellant's appeal and set aside the judgement of the lower court. However, the respondent has indicated that since then, the monies held in the joint interest earning account has not been released to the respondent due to the fact that counsel for the appellant has been incapacitated due to an injury.

10. Indeed, the appellant has a right to the fruits of the judgement delivered. In light of the above, this court finds no reason not to allow both applications and therefore I make the following orders;

i. An order is made for the release of Kshs. 5,848,228 plus interest to the respondent held as security by NCBA Bank in the joint names of Njogu and Ngugi and Ngetich, Chiira and Associates, the NCBA bank.

ii. The signatory representing the law firm of Ngetich Chiira & Associates to solely sign for purposes of releasing the funds from the bank.

iii. The firm of Messrs Njeru, Nyaga & Co. Advocates LLP is now placed on record for the respondent in place of the firm of Messrs Njogu & Ngugi Advocates.

iv. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 17TH DAY OF SEPTEMBER, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent