



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC APPL. NO. 636 "B" OF 2019

SOLOMON KODHEK ODEMBE.....APPELLANT/RESPONDENT

DISMAS JEROME ODHIAMBO OMONGI.....APPELLANT/RESPONDENT

VERSUS

FAITH KAGONYA.....RESPONDENT/APPLICANT

RULING

1. The application dated 30th October, 2019 seeks orders **that the honourable court be pleased to review, set aside and or modify the orders granted on 3rd October, 2019.**

2. Secondly, **that the Appellants be ordered to pay $\frac{3}{4}$ of the decretal sum and a $\frac{1}{4}$ to be deposited in court as security.**

3. On 30th October, 2019, the application dated 3rd October, 2019 was heard *ex parte* and allowed in the absence of the Applicant herein. The Respondents were ordered to deposit 50% of the decretal sum in a joint interest earning bank account in the names of the respective counsel for the parties herein or in court and to deposit security in court for the balance of 50% within 30 days.

4. Subsequently, the Applicant filed the application at hand. It is stated in the grounds and the affidavit in support of the application that there was a consent judgment on liability and that the Appeal herein is on quantum only. That the Respondents will therefore not suffer any substantial loss if part of the decretal sum is released to the Applicant.

5. In response, the Respondents filed the following grounds of opposition:

“1. That the Applicant has not demonstrated that there is an error on the face of the record to warrant a review of the orders granted by the court on 30th October, 2019.

2. There has been no discovery of any new and important matter which was not within the Applicant’s knowledge at the time the orders sought to be reviewed were granted.

3. There is no sufficient reason shown to warrant the interference with the orders of the court made on 30th October, 2019.

4. The Applicant has not shown that she has the means to repay $\frac{3}{4}$ of the decretal amount in the event the appeal is decided in the Appellants’ favour.”

6. I have considered the application and the response to the same. It is not denied that judgment on liability was by consent. The Appeal is on quantum. Consequently, no prejudice will be visited on the Respondents if the Applicant is allowed to enjoy a proportion of the decretal sum. Consequently, I hold that there is sufficient reason shown for this court to interfere with the orders herein dated 30th October, 2019.

7. The judgment on quantum during the Appeal can go either way. The copy of the Decree exhibited herein reflects the amount of about Ksh.5,000,000/= as the decretal sum.

8. This court has also looked at the injuries stated to have been sustained which are reflected in paragraph No. 4 of the affidavit in support. To balance the interest of the parties while being cautious not to render the appeal nugatory, the payment of $\frac{1}{4}$ of the decretal sum is a reasonable figure for the Applicant to start enjoying the fruits of the judgment.

9. In the upshot, I allow the application and order the payment of 25% of the decretal sum to the Applicant, 25% in a joint interest earning bank account of the respective counsel of the parties herein and deposit of 50% as security in court. The orders to be complied with within 30 days from the date hereof. Costs in cause.

Dated, signed and delivered at Nairobi this 6th day of Feb., 2020

B.THURANIRA JADEN

JUDGE