

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 595 OF 2008

KENYA POWER & LIGHTING COMPANY LIMITED.....APPELLANT

VERSUS

BENRRARD MUTUKU KILONZI.....RESPONDENT

RULING

The respondent had a decree against the appellant in this matter following a suit in the lower court. An appeal to the High Court was dismissed by Onyancha J on 11th March, 2015 whereby the court awarded Kshs. 1,500,000/= general damages plus Kshs. 6,000/= special damages.

Earlier on, the decretal sum had been ordered to be deposited in an interest earning account in the names of both advocates for the parties. There is correspondence on record relating to the total decretal sum which the parties had agreed at Kshs. 1,651,325/=. Out of the total decretal sum a sum of Kshs. 520,227/= was paid to the advocates for the respondent.

Eventually a sum of Kshs. 1,246,434.35 was paid to the advocates for the respondent, showing an over payment of Kshs. 115,336.35.

In a letter dated 17th July, 2015 the respondent's advocate wrote to the appellant's advocate showing the amount due and owing to the respondent from the joint account was then Kshs. 898,325/=. I observe herein that the appellant's appeal was dismissed on 11th March, 2015 and therefore that letter was after the determination of the appeal.

The present application dated 3rd October, 2019 seeks an order that, the interest earned from the joint account deposit in its entirety belonged to the applicant, and does not form part of the decretal sum pronounced by the court on 11th March, 2015. As such, it is the respondent's position that the appellant owes the respondent the sum of Kshs. 378,098/= together with interest at court rates from 28th October, 2016 until payment in full.

The application is opposed and there is a replying affidavit sworn by Caroline Warui, the Insurance Officer of the appellant Order 46 rule 6 (2) (b) of the Civil Procedure Rules clearly states that, any security ordered is for the due performance of a decree or order that may ultimately be binding on a party.

In the computation of the amount due and payable to the respondent in the letter dated 17th July, 2015, the respondent's advocate stated the amount due and payable. The money deposited in the joint account belonged to the appellant. The decree having been met and satisfied in full, the respondent cannot claim any further interest on the money that belonged to the appellant.

This matter in my view has been settled in full, and any claim of whatever nature cannot be supported by any provisions of law or equity. After a settlement of a decree, the judgment creditor holds no lien whatsoever on any money belonging to the judgment debtor.

I see no merit whatsoever in this application in view of what is contained in the record, and admission of payment by the appellant to the respondent in settlement of the decree. Having settled the decree, the appellant owes no further sums to the respondent and this application, which was completely unnecessary, should not have been filed at all.

I order that the same be and is hereby dismissed with costs to the appellant.

Dated, signed and delivered at Nairobi this 7th day of May, 2020.

MBOGHOLI MSAGHA

JUDGE

This ruling has been delivered in the absence of the parties and transmitted electronically, after due notice and in line with Article 159 of the Constitution as read with Section 1 B (e) of the Civil Procedure Act, which compliment Order 21 Rule 1 of the Civil Procedure Rules.