



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**MISC. CIVIL APPLICATION NO. 46. OF 2017**

**MC (Minor suing through her next friend and Father HM.....APPELLANT/APPLICANT**

**-VERSUS-**

**AFRICAN BANKING CORPORATION LIMITED.....RESPONDENT**

**RULING**

1. By my ruling in Nakuru HCCA No.133 of 2013 delivered on the 4<sup>th</sup> February 2016, the Respondent in this **Misc. Civil Application, African Banking Corporation Limited** was directed and ordered to release the sum of Kshs.566,295/= plus all accrued interest deposited with it in Account No.[xxxx] to the firm of D.W. Muyundo & Associates Advocates.

2. By this chamber summons dated 14<sup>th</sup> February 2017 and filed on the 3<sup>rd</sup> March 2017 the applicant avers that the above court order though duly served upon the bank, it only released the principal sum of Kshs.566,295/= and has failed to release the accrued interest on the principal as per the fixed deposit receipt.

3. The applicant thus seeks an order to compel the Respondent Bank to pay interest on the sum deposited.

4. In the Advocates supporting affidavit, the pleadings in Nakuru HCCA 33/2013 and the orders made thereunder are exhibited.

The Respondent Bank responded by a Replying affidavit sworn by its manager securities and documentation one Brenda Marangu on the 4<sup>th</sup> April 2017, and submissions filed by its advocates on the 27<sup>th</sup> March 2018.

5. I have noted that the sum of Kshs.566,295/= was released to the applicants advocates on the 4<sup>th</sup> October 2016 but without the accrued interest, which is the dispute in the application. I have looked at the fixed deposit receipt No. [xxxx] – marked as (DWM3) attached to the affidavit of Donald W. Muyundo advocate sworn on the 14<sup>th</sup> February 2017 in support of the application.

It is stated

***The sum of Kshs. Five Hundred Sixty Six Two Hundred Ninety Five only as a deposit bearing interest at 8 percent per annum to remain till 14<sup>th</sup> November 2014.***

*Terms of this Deposit are stated as*

*1. Not transferable*

*2. Interest payment ceases on the date of maturity unless renewal instructions are received 7 days before the date of maturity*

*Signed*

6. The above terms are plain and clear to both the Applicant and the Respondent.

The court has not been told whether or not the deposit interest was renewed or not from the date of maturity, the 14<sup>th</sup> November 2014.

7. In my ruling dated 4<sup>th</sup> February 2016. Paragraph 7 upon dismissal of the appeal, I directed that

***“-- the sum of Kshs.566,295/= plus accrued interest deposited in account No. [xxxx] at African Banking Corporation Ltd in***

*joint names of the parties advocates be released forthwith to the firm of D.W. Muyundo & Associates Advocates.”*

8. Thus the order issued by the court on the 4<sup>th</sup> September 2016 (DWM4) is erroneous and misleading. It is not a true reflection of my order that I have taken the liberty to reproduce above.

9. Without going into further details, and being guided by provisions of **Article 159(2) (d)** of the Constitution that enjoins the court to dispense justice without undue regard to technicalities, I find that the orders sought by the Applicant cannot be availed to it as drafted. It is clear that the non payment of the accrued interest if any, upto the 14<sup>th</sup> November 2014, unless otherwise proven, was caused by the Applicant by serving upon the Respondent an erroneous court order.

10. To bring the matter to its logical conclusion, I direct and order as follows:

***1. That the applicant do extract a correctly worded court order dated the 4<sup>th</sup> February 2016 and serve upon the Respondent's Advocates within 14 days.***

***2. That the Respondent do pay to the Applicant interest on the principal sum of Kshs.566,295/= at 8% per annum from the date of the deposit being 14<sup>th</sup> November 2013 upto the 14<sup>th</sup> November 2014 the maturity date.***

11. I have stated that the terms on the face of the deposit receipt are plain and clear and both parties ought to have complied with the said terms coupled with the terms of the court order.

The Applicant having extracted an **erroneous court order** and serving the same upon the Respondent he can only blame himself for the non-payment of interest.

12. For those reasons, and having issued further orders and directions in the matter, each party shall bear own costs of the application.

**Dated, signed and delivered this 7<sup>th</sup> Day of March 2019.**

**J.N.MULWA**

**JUDGE**