



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 427 OF 2014

MEKADISHEM MINISTRIES.....PLAINTIFF

VERSUS

FATUMA TOMNO.....1ST DEFENDANT

JOHN MWORIA

T/A MWORIA & ASSOCIATES..... 2ND DEFENDANT

RULING

1. The Plaintiff's counsel has raised the issue of failure by the Deputy Registrar to issue a decree pursuant to the judgment entered herein by the Deputy Registrar on 22nd December, 2015 for failure to file a defence by the 1st and 2nd Defendants. The 1st and 2nd Defendants were served but did not attend court during the proceedings the subject of this ruling.

2. The court has been asked to correct an error in the entry of judgment dated 22nd December, 2015. I have perused the file herein. It is noted that interlocutory judgment was entered herein on 22nd December, 2015 for the Plaintiff against the 1st & 2nd Defendants as prayed in the amended plaint.

3. Subsequently, the application dated 26th January, 2017 seeking the setting aside of the aforesaid judgment and the application dated 30th April, 2015 for stay of proceedings and the enlargement of time within which to deposit the sum of Ksh.6,000,000/= were heard before me and allowed upon terms and conditions that were not honoured.

4. On 20th November, 2018 the Plaintiff's counsel filed the Notice of withdrawal of suit dated 19th November, 2018. Subsequently, on 6th December, 2018 prayers a, b, d, e & g of the amended plaint dated 5th October, 2015 were marked as withdrawn.

5. The prayers in the said amended plaint were as follows:

“a) A declaration that the 1st Defendant is in breach of the agreement dated 18th February 2013 and the warranties contained therein.

b) A declaration that the 2nd Defendant's conduct amounts to professional negligence and breach of trust and conflict of interest for acting for both the Plaintiff's and the 1st Defendant.

c) A refund of the deposit paid by the Plaintiff to the 1st Defendant being Ksh.6,000,000/= with interest at 18% from the date of payment until payment in full.

d) General damages for breach of contract and warranty by the 1st Defendant.

e) General for loss of bargain.

f) Costs of this suit with interests.

g) Any such other or further reliefs as this Honourable court may deem appropriate.”

6. The prayer left outstanding is only prayer(c) of the plaint which is for Ksh.6,000,000/= plus interest at Ksh.18% from the date of payment until payment in full.

7. There is no judgment on record for the aforesaid sum of Ksh.6,000,000/= and interest. Consequently, there is no decree capable of being extracted for the said amount. It is apparent that there is an error on the face of the record. Following the Plaintiff's counsel's request for judgment dated 4th December, 2015, the Deputy Registrar entered interlocutory judgment and the case was to be fixed for formal proof.

8. Order 10 rule 4 (2) Civil Procedure Rules provides as follows:

“Where the plaint makes a liquidated demand together with some other claim, and the defendant fails, or all the defendants fail, to appear as aforesaid, the Court shall, on request in Form No. 13 of Appendix A, enter judgment for the liquidated demand and interest thereon as provided by sub-rule (1) but the award of costs shall await judgment upon such other claim.”

9. Consequently, judgment ought to have been entered for the liquidated sum of Ksh.6,000,000/= plus the interest of Ksh.18%. Now that the Plaintiff dropped all the other prayers in the plaint, the issue of costs has now been settled and it is not necessary for the suit to proceed to formal proof.

10. With the foregoing, without undue regard to technicalities of procedure and to meet the ends of justice and taking into account the overriding objectives of the Civil Procedure Act, I am persuaded to correct the mistake in the entry of the judgment dated 22nd December, 2015 to include the following words: **“judgment is entered for the Plaintiff against 1st and 2nd Defendants for Ksh.6,000,000/= plus interest at 18% from the date of payment until payment in full.”** Costs of the suit to the Plaintiff.

Date, signed and delivered at Nairobi this 9th day of April, 2018

B. THURANIRA JADEN

JUDGE