



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

INSOLVENCY CAUSE NO. 2 OF 2017

DAVID BIKETI WATI.....CREDITOR

VERSES

CHRIS MUNGA BICHAGE.....DEBTOR

AND

SIDIAN BANK LTD

LUMALAS ACHIENG & KAVERE, ADVOCATES.....GARNISHEES

RULING

1. The Applicants notice of motion dated 14th January, 2019 prays for an order that the sum of kshs. 141,925 withheld at Sidian Bank Ltd be released to him. The same is supported by his affidavit sworn on the same date.
2. According to the applicant the aforesaid amount was inadvertently left behind by the Debtor despite the ruling of this court of 11th December, 2018 in which he was to be paid a total sum of kshs. 13,930,925.
3. The Debtor on the other hand through the replying affidavit sworn on 4th February, 2019 has disputed the same arguing inter alia that the applicant was paid in full pursuant to the consent dated 19th September, 2018 which compromised this Insolvency Cause.
4. The court has perused this application as well as the Applicant's submissions on record. The court being seized of this matter from the beginning has a good history. It is true that the parties entered into consent to compromise the cause on the 19th September, 2018. However while the same was in motion the applicant seemed aggrieved and he filed an application dated 13th November, 2018 in which he sought garnishee orders to be paid the entire sum of kshs. 13,930,925. The said application was allowed.
5. The court has perused the consent dated 19th September, 2018 in which the parties then attempted to compromise the cause. Under paragraph 2(a,b) thereof the issue of decretal sum in case number 448 of 2016 has been mentioned as well as costs in the Judicial Review Application No. 41 of 2016 as well as in this petition which totals Kshs. 250,000.
6. Contrary to the averments by the Debtor in his replying affidavit dated 4th February, 2019 it does not refer to the costs in Civil suit No. 448 of 2016 at Kitale as per the decree dated 25th May, 2015. The said decree awarded the Applicant the sum of Kshs. 141,925 an amount which was not captured in the consent by the parties. There is no evidence that the decree has been set aside by the said court or by the parties herein. The same therefore remains valid.
7. For the above reasons I find the Applicants application merited . The same is therefore allowed with costs.

Dated, signed and delivered in open Court at Kitale this 15th day of May, 2019.

H. K. CHEMITEI

JUDGE

15/5/19

In the presence of:-

Mengich for Samba for Respondents

No appearance for the Applicant

Court Assistant – Kirong

Ruling read in open court.