



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 836 OF 2003

RWAMA FARMERS CO-OPERATIVE

SOCIETY LIMITED.....PLAINTIFF/APPLICANT

VERSUS

THIKA COFFEE MILLS LIMITED....1ST DEFENDANT/RESPONDENT

FAULU MICRO FINANCE BANK

LIMITED.....INTERESTED PARTY

RULING

1. The subject notice of motion application is dated 25th April 2019. The Applicant is seeking for orders that the costs of the application dated 3rd January 2019, be paid to the Plaintiff herein by the Interested party.

2. It is supported by the grounds on the face of it, and the affidavit sworn dated 25th April 2019 by Gitonga Kithinji Muriuki. He averred that the Decree Holder requested et the subject money claimed herein from the Judgment debtor since the year 2000 until the date of Judgment of the court. Subsequently.

The High court, the Court of Appeal and the Supreme Court pronounced themselves on the matter. The Supreme Court ruling having been delivered on 11th December 2018. That, the High Court ordered for immediate release to the Plaintiff the money deposited with the Interested party. Further the instructions to re-invest the money with the Interested party ceased on 19th October 2018, when the Court of Appeal delivered its Judgment against the Defendant/Judgment debtor's appeal. However, despite service of the court order, the Interested party has refused or neglected to comply accordingly and release the money,

3. That the Interested party's employee one Susan Ng'ang'a sought for clarification in writing of the court orders with the Deputy Registrar of the court but still refused to release the money despite persistent visits by the Plaintiff/Decree holder, arguing there is no party by the name of; Rwame FCS Ltd" or the Decree holder and that the subject bank account does not exist. That the Interested party insisted, that the Plaintiff executes an indemnity in its favour and that of the Branch manager Ms. Susan Ng'ang'a.

All subsequent efforts including a write up to the Chief Executive Officer of the Interested party and phone calls did not succeed in release of the money. As a result, the Plaintiff/decree holder filed an application dated 31st January 2019.

4. The interested party filed grounds of opposition thereto, which was relied on at the hearing of the application and maintained the position that the Interested Party can only issues a cheque in the name of the Decree holder. However eventually the parties recorded a consent on the application that, the money in the sum of Kshs. 19,800,000 be released. The same was released leaving a balance of Kshs. 8,400,000 which is the sum of interest earned on the sums deposited with the Bank of Africa, Rafiki Micro Finance and finally Faulu Micro Finance Ltd. On the 4th February 2019, the Interested party confirmed to the Court the willingness to pay the interest of Kshs. 8,400,000 and paid it on 11th January 2019.

5. The deponent argues that, his lawyer made six (6) appearances in this matter on 8th, 22nd, 28th January 2019, 11th February 2019 and 9th March 2019 for hearing and directions due to the Interested party's failure to release the money and filed the application dated 5th January 2019. Therefore, he should be awarded costs as the Plaintiff is the successful party.

6. I have considered the application and note from the record that, when the matter was eventually called out in Court on 6th May 2019, the

parties were not in court. Later on 3rd June 2019, the court directed the parties to respond to the application and file skeleton submissions. That was not done. On the on 30th July 2019, the due date for ruling the parties was not in court.

7. Having considered the history of the matter, based on the averments in the affidavit in support of the application, I order that the Plaintiff/decree holder be paid costs on the application dated 3rd January 2019, having succeeded in the same. I order that the matter be handled by the Honourable Deputy Registrar on the assessment of the costs payable.

8. It is so ordered.

Dated, delivered and signed in an open court this 4th day of November 2019.

G.L. NZIOKA

JUDGE

In the presence of:

Mr. Muriuki for the Plaintiff/Decree holder

No appearance for the Defendant/Judgment debtor

Dennis -----Court Assistant