



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC CIVIL APPLICATION NO. 412 OF 2016**

**RIARA GROUP OF SCHOOLS LIMITED.....APPELLANT**

**- V E R S U S -**

**NICHOLAS ADALO BURUNA.....RESPONDENT**

**RULING**

1) The two motions herein are to be heard together. The subject matter of this first ruling is the motion dated 04.04.2017 taken out by Riara Group of Schools Limited, the appellant/ applicant herein. In the aforesaid motion, the applicant sought for the following orders:

**1. Spent**

**2. THAT pending the hearing and determination of this application inter partes, a temporary stay be and is hereby granted staying the execution of the judgement delivered on 24<sup>th</sup> May 2016 by Honourable Lilian Arika in Milimani CMCC No. 6201 of 2010: Nicholas Adalo Buruna –vs- Board of Governors Riara Group of Schools and all consequential orders.**

**3. THAT the time within which to comply with the orders made by Honourable Justice J.K Serگون ruling delivered on 2<sup>nd</sup> March 2016 regarding the deposit of the decretal sum in a joint interest earning account, be and is hereby enlarged by a further fifteen (15) days or so to enable the applicant and respondent open a joint interest earning account for the purposes of depositing the decretal sum of Ksh.1,702.000/- as security for the applicants appeal as ordered by the learned judge.**

**4. THAT in the alternative , the court do order that the decretal sum of kshs.1,702,000/- be deposited in court.**

**5. THAT this honourable court do make appropriate orders for the service of this application upon the Respondent and further give directions for the hearing of this application inter partes.**

**6. THAT the costs of the application provided for..**

2) The motion is supported by the affidavit of Verah K.Momanyi. When served the respondent filed its grounds of opposition dated 22.05.2017 to oppose the motion. The parties to this dispute made written submissions when the motion came up for interpartes hearing.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and the grounds of opposition against the application. I have also considered the rival submissions. The applicant avers that order regarding the opening of a join interest account lapsed on 2nd April 2017, and the applicant is still willing to comply with the said orders and seeks, courts extension of time for a further fifteen days to enable it comply with the opening of the joint interest earning account. The respondent on the other hand avers that the applicant has been sluggish in complying with the orders to open a join interest account and thus his excuse should not be entertained.

4) Section 95 of the Civil procedure act clothes this Honourable Court with the discretion to enlarge a fixed period of time for undertaking an action. The said provision is further supported by Order 50 rule 6 of the civil procedure rules which provided that:

***“the courts shall have power to enlarge such time upon such terms as the justice of the case may require, and such enlargement may be ordered although the application of the same is not made until after the expiration of the time appointed or allowed.”***

5) Having considered the rival submissions and the material placed before this court, I am inclined to allow the extension of time with which the applicant can open a joint interest account because the applicant has explained its willingness to comply with the said orders.

The motion is allowed. The applicant is given fifteen days to comply with the orders of opening a joint interest earning account. The stay orders that were granted are extended for fifteen days from the date of this ruling. The costs of the application will be in the cause.

6) The second motion to be determined is that dated 10.04.2017, subject matter of this ruling, taken out by Nicholus Adalo Buruna the respondent/ applicant herein. In the aforesaid motion, the applicant sought for the following orders:

**1. Spent**

**2. THAT an order for review of the order of the Honourable Court given on 2<sup>nd</sup> March 2017 be made to the extent that ksh.1,000,000/- out of the decretal sum be paid directly to the Respondent through his advocates on record and the balance of the decretal sum of ksh. 702,000/- be deposited in a joint interest earning account in the joint names of advocates or the firm of advocates appearing in this matter within 30 days from the date of the order.**

**3. THAT the appeal herein be heard on priority basis.**

**4. THAT the costs of this application abide in the cause.**

The motion is supported by the affidavit of Susan Maira. When served the respondent filed its grounds of opposition to oppose the motion. The parties to this dispute made written submissions when the motion came up for interpartes hearing.

7) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and the grounds of opposition filed against the application. I have also considered the rival submissions. The question to be determined is whether or not this court should review the orders made on 2nd March 2017 which directed that the entire decretal sum of ksh.1,702,000/- be deposited in an interest earning account in the joint names of advocates as a condition for the grant for the order for stay pending appeal. The principle to be considered in an application for review are well stated under Section 80 of the Civil Procedure Act. That there is a discovery of a new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made or on account of some mistake or error apparent on the face of record or for any sufficient reason.

8) The applicant avers that he is in need of urgent and continuous medication and hence part of the decretal amounts should be paid to him directly pending the hearing and the determination of the appeal. The respondent on the other hand submits that the applicant has not met the conditions for the grant of an order of review orders sought and as such the motion should be dismissed.

9) Having considered the rival submissions, it is clear that the applicant is seeking to be paid part of the decretal sum to meet his medical needs pending appeal. Strictly speaking one can say that the basis of the applicant's is for any sufficient cause. In order to succeed in this peculiar application a party must strictly prove that he/she is in dire need of financial accommodation. It is clear from the medical reports annexed to the affidavit filed in support of the motion that the respondent/applicant is relying on medical records and or treatment notes of the years 2009 and 2010. The respondent has failed to file before this court the latest medical records and reports to enable this court determine the urgency of the financial requirements. In the end, I find no merit in the motion dated 10.4.2017. It is dismissed with costs awaiting the outcome of this appeal.

**Dated, Signed and Delivered in open court this 2<sup>nd</sup> day of February, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent