



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 1165 OF 2003**

**JOHN BOSCO MAUNDU.....PLAINTIFF**

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

**WILLIAM WAMBUA KIWIA.....1<sup>ST</sup> DEFENDANT**

**CHARLES MUTUKU.....2<sup>ND</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

1) John Bosco Ngeta Maundu, the plaintiff herein, took out the motion dated 15.12.2016 in which he sought for the following orders:

**1. THAT warrants of arrest issued on 30<sup>th</sup> July 2014 be amended from ksh.1,896,647.15 to read as ksh.1,925,038.**

**2. THAT subsequent to paragraph two (2) above this honourable court do order the release of ksh.700,000/= deposited in court on 11/8/2014 to the plaintiff/applicant plus a further sum of ksh.28,391/= over and above the amount deposited in court on 8/8/2016.**

**3. THAT the cost of this application be borne by the defendants/ respondents.**

2) The plaintiff filed an affidavit and a further affidavit in support of the motion. When served with the motion, William Wambua Kiwia and Attorney General, Charles Mutuku, defendants herein filed the replying affidavit of Charles Mutuku to resist the motion. When the motion came up for interpartes hearing, learned counsels made oral submissions.

3) I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support and against the motion. I have also taken into account the rival oral submissions of learned counsels appearing in this matter. It is the submission of the plaintiff/applicant that while calculating the amount due in the warrants of arrest issued on 30th July 2014 the history of the amount due from the date of judgement vis-a-vis the amount due so far paid by the respondent was not considered hence the errors in the said warrants. The plaintiff pointed out that the decretal amount due ought to be ascertained by referring to the initial notice to show cause issued on 26.6.2013 i.e ksh.2,625,038/=. The plaintiff further stated that the amount paid by the respondent between July 2013 to August 2014 was ksh.700,00/= and a further sum of ksh.1,196,647/= by two bankers cheques of ksh. 525,000 and 671,647/= drawn on 18/7/2014 and 5/8/2014 respectively thus giving a total of ksh.1,896,674/= thus leaving a balance of 728,364/= as the amount due to the plaintiff. It was further pointed out that a further sum of ksh.700,000/= was deposited in court on 11.8.2014 and should be released to the applicant plus ksh.28,364/= which the defendants should pay over and above the amount deposited in court. On the basis of the above analysis, this court was beseeched to issue orders to amend the warrants issued on

30.7.2014 to avoid the decretal sum remaining unsettled and or the plaintiff being underpaid.

4) The defendants/respondents are of the submission that the plaintiff's motion is an abuse of the court process as it is filed in bad faith and was aimed at re-opening matters that have already been decided by this court and the same should be dismissed. The defendants/respondents pointed out that the plaintiff obtained warrants dated 30.7.2014 in the sum of ksh.1,896,647/= being the balance of the decretal sum due. The defendants/respondents further pointed out that this court directed its Deputy registrar to carry out a recalculation of the sums due which directive the Deputy Registrar complied with.

5) With respect, I am persuaded by the submissions of the defendants that the issue touching on the question as to whether or not the warrants issued on 30.7.2014 are erroneous, is a matter this court has dealt with previously, therefore there is nothing that qualifies as an application for review. This court delivered a clear and unequivocal ruling which led to the adoption of the Deputy Registrar's findings on 17.11.2016. In the end, I find no merit in the motion dated 15.12.2016. The same is dismissed. In the circumstances of this case, I think a fair order on costs is to direct, which I hereby do, that each party bears its own costs.

**Dated, Signed and Delivered in open court this 6<sup>th</sup> day of April, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant