



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI
CIVIL CASE NO. 161 OF 2018

ORIENTAL CONSTRUCTION COMPANY LIMITED.....PLAINTIFF/APPL

VERSUS

RIFT VALLEY SERVICES WATER BOARD.....DEFENDANT/RESP

R U L I N G

This is a ruling on the Appellants application dated 9th May 2018. It seeks release of Kshs. 7,882,793.00 which was deposited in the joint interest earning account No. 015255XXXXXXXXX in the name Odhiambo and Odhiambo Advocates & Wanjama & Company Advocates, Standard Chartered Bank Nakuru Branch.

Grounds on the face of the application is that the Defendant being dissatisfied with ruling delivered on 12th July 2012 filed Notice of Appeal and to prevent execution filed application dated 26th August 2013 for stay pending appeal.

The Court granted stay of execution on condition that Kshs. 7,882,793.00 was deposited in Court or in a joint interest earning account. Parties opted to deposit in a joint interest earning account in the names of Advocates herein.

The Defendant aver that Civil Appeal No.268 of 2012 Rift Valley Water Services Board versus Oriental Construction Company Limited was heard on 19th January 2017 and ruling delivered on 31st March 2017.

The Defendant's contention is that the amount deposited and interest should be released to the Defendants Advocates as it has already served as condition for stay as ordered by Court on 28th August 2013.

In response, the Plaintiffs Advocate filed Replying Affidavit sworn on 20th June 2018.

He admitted that the said amount was deposited in a joint interest earning account as condition for stay of execution. He confirmed that ruling on appeal was delivered on 21st March 2018 with result that this suit shall be heard and determined by this Court.

Counsel for the Plaintiff averred that in his view the deposit should be retained, as the claim against the Defendant has not been determined; that the retention of the money reduces burden on Defendant and gives confidence to the Plaintiff in the event judgment is entered for the Plaintiff.

I have considered averments herein. There is no dispute that the amount herein was deposit as a condition for stay of execution pending appeal. Counsel for the plaintiff has admitted that the appeal has been determined.

The court of appeal in its determination did not make an order for continued detention of the deposit. The purpose for which deposit done has been spent. No further application has been made by plaintiff from deposit of money pending determination of claim against the Defendant.

There is therefore no justification for further retention of the money.

FINAL ORDER

1. Kshs. 7,882,793.00 plus interest in Ac. No 015255XXXXXXXXX in the name Odhiambo and Odhiambo & Wanjama & Company

Advocates, Standard Chartered Bank Nakuru Branch be released to the Defendants Advocates.

2. Costs in the cause.

Ruling Delivered, Dated and Signed at Nairobi this 13th day of December, 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

Margaret: **Court Assistant**

No Appearance by Parties: