



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 240 OF 2001**

**RAMESH CHANDRA J SETH**

**T/A MAGANLAL & COMPANY.....APPELLANT/RESPONDENT**

**VERSUS**

**TWIGA INTERTRADE LIMITED.....APPLICANT/RESPONDENT**

**RULING**

The application before the court for determination is the Notice of Motion dated the 30<sup>th</sup> November, 2016 brought under section 3A of the Civil Procedure Act, Cap 21 laws of Kenya, order 51 of the Civil Procedure Rules.

The applicant/respondent has sought the following orders;

- (1) The honourable court be pleased to order release of the decretal sum of Kshs.623.321/- plus interest accrued thereon in the joint fixed account of Ramesh Manek & Company Advocates & Kembi-Gitura & Company Advocates Account No. [Particulars withheld] held at the Bank of Africa to the firm of Kembi-Gitura & Company Advocates dispensing with the need for signatures from Messrs. Ramesh Manek & Company Advocates.
- (2) The decretal sum of Kshs.623,321/- plus interest accrued thereon be transferred to the bank account of Kembi-Gitura & Company Advocates Account No. [Particulars withheld] NIC Bank Limited NIC House Branch
- (3) Costs of the application be provided for.

It is premised on the grounds set out on the body of the same and its supported by the affidavit of Njoki Gachihi sworn on the 30<sup>th</sup> November, 20 16.

In the supporting affidavit, it is deponed that the appeal herein was filed on the 16<sup>th</sup> may, 2001 against the decision of the learned magistrate in CMCC No. EJ. 149/2000.

The appellant brought an application for stay of execution pending the hearing and determination of the appeal which was granted on condition that the decretal sum be deposited in court as security pending the hearing and determination of the appeal which amount the appellant deposited as ordered. The money was deposited in credit Agricole Indosuez bank now Bank of Africa in the names of Ramesh Manek & Co. Advocates in account number00402160019 held at the Bank of Africa.

That as the appeal was still pending, the appellant withdrew instructions from the firm of Ramesh Manek & co. Advocates and instructed the firm of Kelvin Mogeni & Co. Advocates who prosecuted the appeal and judgment was delivered on the 25<sup>th</sup> March, 2015 in favour of the respondent and the court ordered that the decretal amount which by then stood at Kshs.623,321/- be released to the respondent at the expiry of 30 days from the date of the judgment, a copy of that order is annexed as annexure 6.

That before the money could be released, the appellant withdrew instructions from the firm of Kelvin Mogeni & Co. Advocates as a result of which the said firm could not sign for the release of money.

The court has perused the record and it is clear that the appeal was heard and determined and the Judge made an order for the release of the decretal sum. The application is not opposed and the appellant did not attend court when the application came up for hearing despite the fact that he had been served with a hearing notice.

I find no reason why the money should not be released to the respondent. The application is hereby allowed, the decretal sum currently held in account number [Particulars withheld] at Bank of Africa in the joint names of Ramesh Manek & Co. Advocates be released and transferred to the bank account of Kembi-Gitura & Co. Advocates account number [particulars withheld] held at NIC bank limited NIC House Branch.

Costs of the application shall be borne by the appellant.

Dated, Delivered and Signed at Nairobi this 23<sup>rd</sup> day of March, 2017.

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**L. NJUGUNA**

**JUDGE**

**In the presence of**

..... ***For the Appellant/Respondent.***

..... ***For the Applicant/Respondent***