



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 473 OF 2016

ELGON KENYA LIMITED.....APPELLANT

VERSUS

PETER MUSYOKA KAMUYA.....RESPONDENT

RULING

Before the court for determination is the application dated 26th April, 2017 brought under **sections 1A, 1B and 3A of the Civil Procedure Act and Orders 50 Rules 5, 6 and 7 and Order 51 rule 51 (1) of the Civil Procedure Rules.**

The applicant has sought for orders that:

1. *Spent*
2. *That the court extend the period of time for deposit of the decretal sum ordered by this honourable court on 30th March, 2017 pending the hearing and determination of this matter.*
3. *That the honourable court do grant the appellant an extension of time to comply with the court orders pursuant to the ruling delivered on 30th March, 2017.*
4. *That the respondent's advocates be ordered to sign the Prime Bank opening forms furnished by the appellant and in the alternative an order do issue to the Deputy Registrar of the High Court to sign the requisite forms and documents required to open a joint account on behalf of the respondent's advocates.*
5. *That this honourable court do issue any other orders it deems fit to grant in the interest of justice.*
6. *That costs of this application be in granted to the appellant.*

The application is premised on the grounds set out on the body of the application and it's supported by the affidavit of **PERIS WANGARI MUKIRI** annexed to the application.

The deponent who is an advocate in the firm of Karanja Njenga & Co Advocates who have the conduct of this matter on behalf of the appellant avers that by a ruling of the court delivered on 30th March, 2017, the court ordered the whole decretal sum of KShs.4,048,036/- to be deposited in a joint account in the name of both advocates for the parties herein. The money was supposed to be deposited within 30 days from the date of the ruling failing which, the stay order issued would lapse.

That the advocate for the appellant wrote a letter dated 13th April, 2017 informing the advocate for the respondent of their proposal to open a joint account at Prime Bank. In the same letter, they requested them to indicate to them their available date between 18th and 21st April, 2017 when the counsel for the appellant would visit their offices for purposes of filing up the bank account opening forms.

That since then, counsel for the respondent has frustrated the opening of the account as a result of which, the time given by the court to deposit the money lapsed. The applicant is apprehensive that unless an extension is granted, it will be unable to comply with the said order, to its detriment.

When the application came up for hearing on 3rd May, 2017, the respondent was not represented. The respondent has also not filed a response to the application despite having been served with a hearing notice.

This court has considered the application together with the material in support of the same. I have noted the efforts made by the appellant to comply with the court order. From the correspondences exchanged between counsels for the parties herein, it would appear that they cannot agree on a common bank in which to open a joint account. Both counsels have taken a hard stand on the banks of their choice and none of them is willing to accommodate the other in that respect.

In prayer 4 of the application, the applicant has sought an order that the respondent's counsel be ordered to sign the Prime Bank opening forms furnished to him by the counsel for the appellant or in the alternative an order be issued directing the Deputy Registrar of the High Court to sign the requisite forms and documents required to open a joint account on behalf of the respondent's counsel. With all due respect to the counsel for the applicant, I do not believe that those are best orders for this honourable court to make in the circumstances of this case.

In the interest of justice and to save judicial time and under the inherent powers donated to this court by the law, the following orders are made:

- 1. The time granted to the appellant to deposit the decretal sum is hereby extended by a further ten [10] days.***
- 2. The decretal sum be deposited in court.***
- 3. The costs of the application shall abide the outcome of the appeal.***

Dated, signed and delivered at Nairobi this 5th day of May, 2017.

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L. NJUGUNA

JUDGE