



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 100 OF 2001

MUNICIPAL COUNCIL OF MACHAKOS PLAINTIFF

VERSUS

**1. NATIONAL WATER CONSERVATION
2. PIPELINE CORPORATIONS DEFENDANT**

RULING

1. The application dated 8/12/2008 seeks orders *inter alia* that the court do review the judgment herein and absolve the Defendant from any further obligation to pay the judgment debt or any balance thereof.
2. The application is supported by the affidavit of the **Managing Director** of the Defendant Corporation. It is deponed that by reason of **Legal Notice No. 101** of the 12th August 2005, the responsibilities and liabilities of the 1st defendant were transferred to the relevant Water Boards. Consequently, the Defendant transferred its assets and liabilities initially to **Athi Water Services Ltd Board** and later to **Tana Athi Water Services Board**. It is further asserted that the payment of the decretal sum or any balance thereof is not the responsibility of the Defendant.
3. The application is opposed. The Interested Party **Tanathi Water Services Board** filed grounds of opposition dated 30/9/13 and opposed the application on the following grounds:-
 1. **“THAT the application is incompetent, bad in law and cannot sustain the prayers sought hence ought to be struck out.**
 2. **THAT the Interested Party cannot be compelled to settle a decree emanating from proceedings which it did not take part in.**
 3. **THAT the application seeks orders whose results will be a direct violation of the rules of natural justice to wit the Interested Party’s right to be heard and defend itself before being bound by a decree.**
 4. **THAT in view of the foregoing grounds, the application dated 8th December 2008 is an abuse of the process of this court and ought to be dismissed with costs to the Interested Party.”**
4. The Plaintiffs in opposition to the application filed the grounds of opposition dated 10/12/2008.
 1. **“That the application is without merits as it lacks basis both in law and in fact.**
 2. **That the application is based on gross misconception and/or mischief and is merely intended to unlawfully deny the Respondent the fruits of the judgment herein.**
 3. **That the Respondent is lawfully seeking to realize the balance of the decretal sum herein.**
 4. **That the Applicant is the judgment debtor and the decree can be executed only**

against it and not any other party.

- 5. That legal notice No. 101 of 12-08-2005 does not absolve the Applicant from the liability of satisfying in full the decree herein.
- 6. That the application is otherwise an abuse of the court process and should be dismissed with costs.”

- 5. The application was canvassed by way of written submissions which I have duly considered.
- 6. The application is made under **O. XLIV rule 1 (1)** and **O. XXI r. 22 of Civil Procedure Rules** (repealed).
- 7. The said provision of the law stipulates as follows:

Order XLIV rule 1:-

“Any person considering himself aggrieved-

- a. by a decree or order from which an appeal is allowed but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed,

And who from the discovery of 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 the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

“Order XXI r. 22:-

“the court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto.”

- 8. The Applicants have not given the date of the judgment complained about. However, a perusal of the court record reveals that judgment (ex parte) was entered herein on 19/10/2002 for the sum of Kshs.6,114,572/50. No reason has been given why the said judgment should be reviewed.
- 9. On 26/11/2009, a ruling by this court the Interested “**Tanathi Water Services Board and Athi Water Services Board**” were enjoined in these proceedings. This therefore seals the fate of the application. The application at hand has therefore been overtaken by events. Consequently, I dismiss the application with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **11th** day of **March** 2015.

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B. THURANIRA JADEN

JUDGE