

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1043 OF 2004

KLAXON LIMITED.....APPELLANT

VERSUS

URGENT CARGO HANDLING LIMITED.....RESPONDENT/APPLICANT

RULING

1. The subject of this ruling is the motion dated 20th August 2015 in which the respondent is praying for orders that a sum of kshs 123,694. 15/= deposited in court on 16th December 2004 by the appellant be released to it to partially satisfy the decree issued in **RMCC 9620 of 2002**. It also prays that this court makes orders directing the lower court file to be returned so that the applicant can initiate execution proceedings for any short fall after recovering the sum deposited in this appeal and costs be provided for.

The motion is supported by the affidavit of **Hillary Wameyo**.

2. The appellant neither filed a response nor appeared in court at the interpartes hearing of the motion. It is apparent from the court record that the appeal was filed on 29th October 2009 and there has been no appearance in court by the appellant ever since.

3. The gist of the dispute is that the respondent sued the appellant seeking for judgment in the sum of Kshs 63,221.25/=. The respondent claimed that he had provided services to the appellant which included clearing goods at the port of Mombasa for a fee. It claimed that, the appellant paid in part leaving a balance of kshs 63,221.25/=. The trial court upon hearing the matter, entered judgment against the appellant for the sum of Kshs 63,221.25/= plus interest. The appellant aggrieved by the aforesaid judgment preferred this appeal. A record of appeal was filed on 28th October 2009. It has not prosecuted the appeal ever since.

4. I have considered the grounds outlined on the face of the motion plus the facts deponed in the affidavit filed in support. Looking at the court record, it is apparent that the appeal was dismissed on 16th June 2015 for want of prosecution. The appellant had sought for an order for stay of execution which was granted by **Aluoch J.** on condition that it deposits the decretal sum and costs amounting to Kshs 123,694.15/= in this court. Through the cheque dated 16th December 2004 addressed to the Deputy Registrar, and its advocates letter forwarding the cheque, the appellant, deposited the money in this court.

5. It is clear from the directions of the court given on 16th December 2004, that the appellant was directed by **Aluoch J.** to deposit the decretal sum of Kshs 123,694.15/= which it did. The aforesaid amount was held in order to avoid execution until the intended appeal is heard. The appeal having been dismissed on 16th June 2015, the condition upon which the deposit of Kshs 123,694.15/= was made has been fulfilled. It follows that the money cannot continue to be held since there is no pending appeal.

6. Consequently I find the application to be well founded. It is allowed as prayed.

Dated and delivered in open court this 6th day of November, 2015

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendants