

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO 333 OF 2006

KENYA BUS SERVICES LIMITED.....APPELLANT

V E R S U S

COOPERATIVE BANK OF KENYA LTD.....RESPONDENT

PRELIMINARY RULING

1. On 2nd November, 2006 the parties to this appeal recorded a consent which included the following order:

“(c) The Appellant’s insurer, M/s Madison Insurance Company Limited undertakes to pay the balance of the decretal sum in the event the appeal is unsuccessful and the Respondent undertakes to refund the money received if the appeal is successful.”

2. The appeal was eventually dismissed except the issue of interest which was adjusted by the Court to be effective from 20th May, 2005.

3. The Respondent in the appeal has now applied by **notice of motion dated 11th December, 2012** for orders of enforcement of the undertaking by the Appellant’s insurer, **Madison Insurance Company Limited**. The application is opposed by the Appellant by **replying affidavit sworn by its advocate and filed in Court on 10th April, 2013**.

4. The parties elected to canvass the application by way of written submissions. The Respondent’s submissions were filed on 30th April, 2014 while those of the Appellant were filed on 2nd May, 2014. I have read those submissions. It is clear that the dispute disclosed is one of arithmetic. It is the Appellant’s contention that because of the adjustment made by the Court in its judgment herein regarding the effective date for the interest, it has not only fully paid all due interest but is in fact owed KShs 50,000/00-odd by the Respondent. The Respondent on the other hand contends that the Appellant owes it the sum KShs 700,000/00-odd upon the decree.

5. To enable a proper resolution of the application at hand, let the Deputy Registrar of the Court first take accounts in order to determine which party owes the other, if at all, and if, so how much. For this purpose the parties shall appear before the Deputy Registrar on a date to be given at the delivery of this ruling. Costs will abide final determination of the application. Those will be the orders of the Court.

DATED AND SIGNED AT NAIROBI THIS 10th DAY OF JULY 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 11TH DAY OF JULY 2014