



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA DISTRICT REGISTRY**

**CLAIM NO. 7 OF 2011**

**THE OWNERS OF MOTOR TUG “HAM 1400” .....CLAIMANT**

**VERSUS**

**THE OWNERS OF THE MOTOR VESSEL “PONMUDI” ..... DEFENDANT(S)**

**RULING**

1. I am called upon to determine whether the fees of **RAPHAEL WAMBUA MUSAU (Raphael)** should be paid and if payable when it should be paid out, from the sale proceeds of Vessel PONMUDI. The sale proceeds are held in the Admiralty Marshall’s account. Raphael was appointed to appraise the vessel PONMUDI which was then under arrest. Raphael was appointed by Court by consent of Counsels in this matter.

2. The payment for that appraisal is objected to by the Claimants in **Claim No. 7 of 2011**. The basis of objecting is that there is pending for determination an Application Notice dated 1<sup>st</sup> November 2012 seeking to set aside the Claimant’s judgment. In the affidavit of TITUS KILONZO of 27<sup>th</sup> May 2014 the Claimants objection is stated to be that if the said Application Notice of 1<sup>st</sup> November 2012 is successful there will be no decree in **Claim No. 7 of 2011** and the sale of the vessel and the appraisal carried out will be rendered a nullity.

3. I have considered the objection raised to the payment of the appraisal fees of Raphael. In my view such objection cannot be a basis to refuse to pay for services already rendered. As stated before, Counsel for Claimants in **Claim No. 7 of 2011** consented to the appraisal being carried out before the sale of the Vessel. The Vessel was sold following that appraisal. It therefore follows that nothing can reverse either the appraisal or the sale of the vessel to a third party. I have also noted that in the Application Notice dated 1<sup>st</sup> November 2012 one of the orders sought is that-

**“Payment out of the proceeds of sale of any sum to the Claimants in this Claim (that is No. 7 of 2011) be stayed until the hearing and determination of this application.”**

It follows that if there is distribution of the proceeds of sale of the Vessel amongst the various Claimants in Claims **Nos. 7 of 2011, No. 11 of 2010, No. 12 of 2010** and **No. 1 of 2011**. The amount due to the Claimants in Claim **No. 7 of 2011** shall be held in abeyance awaiting the determination of the Application Notice of 1<sup>st</sup> November 2012.

4. Accordingly the orders that commends itself to me and which is the order of this Court is that-

- a. **The Invoice of RAPHAEL WAMBUA MUSAU be paid out of the sale proceeds held in Admiralty Marshall account.**
- b. **There shall be no orders as to costs in respect of this Ruling.**

**DATED and DELIVERED at MOMBASA this 17<sup>TH</sup> day of JULY, 2014.**

**MARY KASANGO**

**JUDGE**