



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**MISCELLANEOUS APPLICATION NO. 389 OF 2009**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL  
REVIEW BY WAY OF MANDAMUS**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE DEPUTY REGISTRAR**

**HIGH COURT OF KENYA, ELDORET ..... 1ST RESPONDENT**

**THE DISTRICT ACCOUNTANT-UASIN GISHU DISTRICT,**

**DISTRICT COMMISSIONER'S OFFICE ELDORET ..... 2ND RESPONDENT**

**RULING ON PAYMENT OF INTEREST ON PRINCIPAL SUM**

This judicial review application was determined by an order issued in court on 23rd March, 2010 under the following terms:-

**(i) That an order of judicial review by way of mandamus be and is hereby issued in favour of the Applicant compelling the Respondents.**

**(a) To release to the Applicant a sum of Kshs. 1,419,825.90 in accordance with the order of the court dated 3rd August, 2004 vide ELDORET HCC. NO. 11 OF 1993 BHUDIA BUILDERS ERECTORS - VERSUS - SPARES & SERVICES LIMITED.**

**(b) To account for all the interest that may have accrued thereon for the period that the court held the said sum being from the date of the consent order dated 3rd August, 2004 which required that the money be released to the Applicant to the date when the court shall release the same.**

**(ii) That the costs of these proceedings shall be borne by the Respondents.**

Upon the issuance of the order the Respondents have had no problem with the release of the principal sum cited in paragraph (i) (a) of the decree together with the taxed costs in the sum of Kshs. 137,769.70.

For a period of time since the order was issued, the sum of the taxed costs had not been released to the Applicant. On 4th June, 2013 when the matter was mentioned before me, counsel for the Applicant was to provide the Chief Magistrate, Eldoret with their bank account details for purposes

of depositing of the sum (cost) into their account for onward transmission to their client. At the time, this sum had been paid into the State law office who required the bank details for the respective purpose.

Court file record shows that M/s. Otieno Ragot & Company, advocates for the Applicant wrote a letter dated 12th June, 2013 to the Chief Magistrate, Eldoret providing the bank account details as requested for. I would opine that this has so far been done.

What is however contentious is an amount of purported accrued interest against the sum of Kshs. 1,419,825.90 deposited with the District Treasury, Eldoret. The Ex-parte Applicant claims this figure to the tune of Kshs. 1,529,199.10. The Respondents' position on the other hand is that the monies, having been deposited with the District Treasury could not accrue any interest. It is the submission of the Respondents that the money was only deposited with the District Treasury for safe custody.

The Applicants positions however is different. That the court decree was in express terms, that the said money should be paid together with the accrued interest from the date of the consent order dated 3rd August, 2004 which required that the money be released to the Applicant to the date when the court shall release the money. The impression I get from the tag of war that has persisted between the parties, is that, this court should interpret for them the terms of the order issued by the court. Due to the disagreement between the parties, the draft decree extracted by the Applicant has never been certified by the Deputy Registrar of this court.

The terms of the orders issued by the then Hon. Mwilu, J on 23rd March, 2010 are in the express terms as submitted by counsel for the Applicant. The Respondents may not have agreed with those orders but the right avenue is not to denounce the terms of the order, but rather seek redress through the judicial process that issued the order they do not agree with. Redress should have been sought by way of an appeal or even review or stay of that order.

In the case of **ISAAC -VS- ROBERTSON (1984) 3 ALL E.R, 140 AT PAGE 142,** (cited by the Applicant's Counsel) Lord Diplock said:-

**"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void"**

Again in **CHUCK -VS- CREAMER (1846) 1 COOP TEMP COLT 338 AT 342; 47 ER. 884,** it was also held:-

**"A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it ..... It would be most dangerous to hold that suitors or their solicitors, could themselves judge whether an order was null or valid, whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed." Lord Diplock then added, "Such being the nature of this obligation, two consequences will in general, follow from the breach. The first is that anyone who disobeys an order of the court ..... is in contempt and may be punished by committal or attachment or otherwise."**

In our local jurisdiction, the then Hayanga, J in **WACHURI FARMERS CO-OP. SOCIETY LIMITED & ANOTHER -VS- MBURU MUNGAI & ASSOCIATES & ANOTHER - MISCELLANEOUS CASE NO. 1097 OF 2002,** said:-

**"It is contempt of court to disobey orders of a court either to do a specified act within a specified time or to abstain from doing a specified act."**

In the instant case, the order of the court issued on 23rd March, 2010 has never been discharged, reviewed or set aside. The same should be obeyed to the letter, notwithstanding that the party against whom it is issued thinks it is irregular or wrong. If the latter feels aggrieved by the order, it should seek redress accordingly. In my view, the Respondents are using the wrong platform to canvass the reasons they think the order should not be obeyed. I am unable to come to their rescue, unfortunately.

I am also aware that the amount of interests accrued against the principal sum would also be contentious. My considered view of arriving at the right figure would be by presenting the proposed figures before the Deputy Registrar for consideration. This is in view of the fact that, it must be argued at what rate the interest is payable giving regard to the fact that the sum may have been deposited in an ordinary bank account. This is an issue that can be ably canvassed before the taxing officer.

For now however, the Respondents must abide with the order of the court unless otherwise the same is varied, reviewed, set aside or stayed.

It is so ordered.

**DATED and DELIVERED at ELDORET this 10th day of October, 2013.**

**G. W. NGENYE – MACHARIA**

**JUDGE**

No appearance for Mr. Omondi for the Applicant

Mr. Ngumbi for the Respondents