

PAUL RUKARIA PLAINTIFF

VERSUS

JULIUS KIMATHI MBOGORI RESPONDENT

RULING

This matter has had its own chequered and interesting history. The plaintiff filed a claim against the defendant by the plaint dated 21st January 2002 whereby he sought judgment for Kshs. 250,000/= plus 16% interest from March 1997. The court after hearing the case entered judgment for the plaintiff on 19th October 2006 in the following terms:-

“The final orders are that there is now a judgment for the plaintiff in the sum of Kshs. 100,000/= plus interest at 16% p.a from 1st March 2006 until payment in full.”

The plaintiff moved the court by a notice of motion dated 30th November 2006. In that notice of motion he prayed for the following prayer:

“That this Hon. Court be pleased to review its judgment delivered on 19th October 2006.”

The application when it came before the Hon. Mr. Justice Lenaola on 21st June 2007, the proceedings of that day show as follows:-

“By consent, application dated 30th November 2006 is allowed as prayed. Costs in the cause.”

Following that order, the plaintiff draw a decree showing judgment having been entered for the plaintiff on 19th October 2006 for Kshs. 300,000 plus interest at 16% p.a. until payment in full. That decree was signed and sealed by the Deputy Registrar of this court. The defendant moved the court by a notice of motion dated 14th May 2008 prayed to set aside that decree. By a ruling delivered by the Hon. Mr. Justice Ouko on 24th October 2008 the judge found that the procedure of approving the decree as provided under the Civil Procedure Rules in particular Order XX had not been followed because the defendant had written a letter objecting to that decree and after that objection the court should have been moved as per order XX Rule 7(4). That Rule is in the following terms:-

“On any disagreement with the draft decree any party may file the draft decree marked as for settlement and the registrar shall thereupon list the same in chamber before the judge who heard the case or, if he is not available, before any other judge, and shall give notice thereof to the parties.”

The court by that ruling set aside the decree for failing to abide by that rule. The task before me now is to settle the decree. I requested the parties to address me by way of written submissions. I have considered the written submissions before me. With the greatest respect those submissions did not assist the court. If I can, I will start with the defendant’s submissions. The defendant seemed to have misunderstood the purpose of settlement of a decree. It is not to find fault with the judgment in the case but rather it is to ensure that the decree is in conformity with the judgment. The plaintiff’s submissions did not also assist the court since they repeated the depositions in the plaintiff’s affidavit which was sworn in support of the notice of motion dated 30th November 2006. In my view, the plaintiff drafted the decree which did not conform with the judgment in this matter. Let me retract. On 19th October 2006 judgment was entered for the plaintiff against the defendant for Kshs. 100,000 plus interest at 16% from first of March 2006. When the plaintiff applied to review that judgment by notice of motion dated 30th November 2006 he failed to set in the prayers in that notice of motion to indicate the orders of review that he required to be entertained by the court. In other words, the plaintiff did not show the terms of the

review he was seeking to substitute the judgment of 19th October 2006. The prayer in that notice of motion if I may repeat myself simply stated that the plaintiff was seeking the review of the judgment delivered on 19th October 2006. The question that arises is, on reviewing that judgment, what substitute was going to be put in place? The plaintiff cannot be heard to say that the substitute he was seeking can be discerned from the supporting affidavit to the notice of motion dated 30th November 2006. A supporting affidavit is just that. It supports the prayers in the application. In this case, it was supporting a prayer that did not provide a substitute to the judgment delivered on 19th October 2006. That being so, I in this settlement of decree find that the decree drawn by the plaintiff attached to the letter of the firm of A.G. Riungu & Co. Advocates dated 12th November 2008 and filed in court on 13th November 2008 is in error because it does not reflect the judgment on record. The only decree that can reflect the judgment on record is the one which will reflect judgment for the plaintiff for Kshs. 100,000/= plus interest at 16% p.a. from 1st March 2006. That is the judgment on record until there is another judgment to displace it. The order by consent of 21st June 2007 allowing the application dated 30th November 2006 did not displace the judgment of 19th October 2006. The order of this court is that the Deputy Registrar of this court is only authorized to sign and seal a decree reflecting the judgment dated 19th October 2006. There shall be no orders as to costs.

Dated and delivered at Meru this 8th day of October 2009.

MARY KASANGO

JUDGE