



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NUMBER 277 OF 2009

SIR BROOK SKY LIMITED

----- **PLAINTIFF**

VERSUS

NAKURU INDUSTRIES LIMITED -----
DEFENDANT/APPLICANT

RULING

1. For determination is the Defendant's Notice of Motion dated 25th July 2024 for reliefs as hereunder;-
 - i. **THAT the computation made by the Deputy Registrar vide her ruling of 19th July 2024 pursuant to the order of the court made on 4th July 2023 be set aside.**
 - ii. **THAT accounts in respect of the matter in dispute between the parties, specifically an inquiry of what the Plaintiff paid the Defendant, be undertaken by a qualified auditor to be agreed by the parties in 14 days or in default an auditor appointed by the Chairman of the Institute of Certified Public**

Accountants of Kenya (ICPAK) after which the court will determine the liability of the Plaintiff under the decree herein.

iii. THAT the court does issue such further orders as may be in the interest of justice.

iv. THAT out of an abundance of caution and to the extent that it may apply, the instant application be deemed as an appeal, and its grounds be deemed as a Memorandum of Appeal challenging the decision of a Registrar.

v. THAT the costs of the Application be provided for.

2. The Application is predicated on grounds set out on the body thereon as well as affidavit evidence of the Defendant's Director (R. P. Shah). He avers in the affidavit *inter alia* that on 4th July 2024 this court directed the Deputy Registrar to take accounts in respect of the dispute between the parties for the purpose of ascertaining the amount paid out by the Plaintiff. By Ruling dated 19th July 2024 the Deputy Registrar is said to have found that the Plaintiff had paid a sum of Kshs. 2,076,000/= and directed that this amount be paid out to the Plaintiff out of a sum deposited into court.

3. The Defendant faults the Deputy Registrar's finding contending that only accounts presented by the Plaintiff were considered. Among submissions allegedly made by the Defendant before the Deputy Registrar was that a sum of Kshs. 432,000/= the Plaintiff paid to the Rent Tribunal had not been credited to the Defendant Company. It was further submitted on behalf of the Defendant that the decree herein includes costs taxed on 22nd January 2019 in the sum of Kshs. 573,410/=.
4. The Deputy Registrar is further accused of exceeding her legal mandate by determining how funds held in Court were to be apportioned. According to the Defendant's Director, the only question that was before the Deputy Registrar was establishing the amount the Plaintiff had paid.
5. The Defendant therefore wants the contentious accounts to be taken by a professional, hence the Application.
6. The Plaintiff Company opposes the Application *vide* an affidavit in reply of its Managing Director (Shah Ramniklal Motichand Keshavji). Citing directions of the court given on 4th July 2023, the Plaintiff's witness asserts that the only pending issue is ascertaining what amount the Plaintiff paid

in rent to the Defendant during the material period. The court is told that both the Court of Appeal and this court were “almost categorical” that the Plaintiff had all along been paying rent at monthly rate of Kshs. 12,000/= to the Defendant or its Advocates whilst the rent payable was Kshs. 24,000/= per month.

7. The Plaintiff sides with the Deputy Registrar saying that she stuck to her mandate as given by this Court. It agrees that the sum of Kshs. 432,000/= alluded to in the Application is the correct amount paid to the Rent Tribunal on account of the Defendant. The Plaintiff is said to be willing and ready to consent to release of the sum from the Tribunal to the Defendant.
8. The Plaintiff’s witness therefore contends that litigation between the parties hereto is over and that this Application is an attempt to irregularly and unlawfully re-open the case. On advice of its Legal Counsel, the Plaintiff states that this Application cannot be deemed as an Appeal contrary to the Defendant’s suggestion, for the reason that no Appeal lies from the Ruling of the Deputy Registrar to this court.

9. For the above reasons among others, the Plaintiff dismisses this Application as incompetent, devoid of any merit and otherwise an abuse of the court process.
10. The parties filed written submissions through their Advocates, which I have read through against the rival affidavit evidence and the record.
11. A brief background to this Application is that the Plaintiff sued the Defendants before this court for a permanent injunction restraining it and/or its agents from interfering with its tenancy of property known as LR No. 11265 belonging to the latter. General damages, for trespass, the costs of the suit and interest were other reliefs sought. The Plaintiff's position was that it owed no rent arrears claimed by the Defendant.
12. The Defendants filed Defence and Counter Claim on 1/7/2010 contending *inter alia* that the Plaintiff in fact owed rent arrears then standing at Kshs. 8,070,000/= which they claimed through the Counter claim.
13. In its judgement rendered on 12th April 2013, the court found that the tenancy was a controlled tenancy, and among other directions, ordered for a formal lease to be executed

and valuation of appropriate rent payable on the property in issue. Differences between the parties cropped later leading to the present Application.

14. The Application is expressed to be brought under the provisions of **Sections 1A, 1B, 3 and 3A of the Civil Procedure Act Cap 21 of the Laws of Kenya**. These provisions save the court's inherent power to do substantive justice even in situations where there are no express guiding legal provisions.
15. The *gravamen* of the Plaintiff's agreement is that the matter is *res judicata* by dint of final judgement having been entered. The Court concurs. The Deputy Registrar was only exercising power delegated to her by this Court to take accounts in respect of the disputed rent payments. Her resultant decision would therefore be deemed to be this Court's decision unless otherwise set aside.
16. This Application may not be converted to be an Appeal from the Deputy Registrar's decision since legal procedure requires an Appeal to be mounted through a Memorandum of Appeal which is not the case here.

17. If the Defendant is contending that there is an error or mistake apparent on the Ruling of the Deputy Registrar, then perhaps the remedy available to the Defendant is to file an Application seeking review of the Deputy Registrar's decision pursuant to the Provisions of **Order 45 of the Civil Procedure Rules 2010.**

18. Since this is neither an Appeal nor a Reference from the decision, the Court has no jurisdiction in the circumstances. The upshot is that the Application is dismissed with costs to the Plaintiff.

J. M. NANG'EA, JUDGE.

Ruling dated, signed and delivered at Nakuru this 17th of November, 2025.

In the presence of:

The Plaintiff's Advocate, Ms Chepng'etich for Mr. Kisilah

The Defendant's Advocate, Ms Chege for Mr. Ogunde

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.