



REPUBLIC OF KENYA
ENVIRONMENT & LAND COURT

MILIMANI LAW COURTS

CIVIL SUIT NO. 2484 OF 1994

FRANCIS WAKAHU THEURI.....PLAINTIFF/RESPONDENT

=VERSUS=

MONICA NJERI

EASTHER WANGUI

CATHERINE MUTHONI

FRANSCIS NJURU NGUGI

ALL t/a WAWAGE INVESTMENT CO....DEFENDANTS/APPLICANTS

RULING

1. The applicants file a Notice of Motion dated **6th December 2016**, in which they seek the following reliefs:-

i. Spent

ii. An order do issue directing standard chartered bank Kenya Limited to release and pay to the firm of Mwaura & Kigutha Advocates for the Defendants all the monies (Principal and interest accrued thereon) in fixed deposit account number 01422/794756/00 opened on 13th October 1998 at its Harambee Avenue Branch in the names of Deputy Registrar, High Court of Kenya, Gachomba & Company and Wangong'u & Company.

iii. The costs of this application be in the cause.

2. The applicants contend that in a judgement delivered on 14th December 2012, Justice Nyamweya directed that the defendants be refunded a sum of **Kshs.2,500,000/=** which had been deposited in a joint interest fixed account at Standard Bank. The judgement of the court became a subject of appeal to the Court of Appeal which reduced an amount which the applicants were to deposit from **Kshs.80,000,000/=** to **Ksh.20,000,000/=** which was to be deposited within 60 days failing which the application was to stand dismissed.

3. The applicants now contend that they need the money in order to comply with the Court of Appeal order requiring them to deposit a sum of **Kshs.20,000,000/=** within 60 days.

4. The applicants' application is opposed by the Respondent through grounds of opposition filed in court on 19th December 2016, and a replying affidavit sworn on 16th December 2016. The Respondent contends that the applicants' application is an abuse of the process of the court in that it is seeking what had already been granted to them in a judgement delivered on 14th December 2012. That the applicants have never extracted a decree from the judgement of 14th December 2012, which would have enabled them to access the amount deposited in the bank.

5. The Respondent further contends that the court is functus officio having dealt with the issue in the judgement which cannot again be re-opened in this application.

6. I have carefully considered the applicants application as well as the opposition to the same by the Respondent. I have also considered the submissions by counsel for the parties. This application is clearly an abuse of the process of the court. What the applicants are seeking to do is to amend a judgement which was delivered on 14th December 2012. The order of the court was specific that the amount was to be released to the applicants. The applicants are now seeking that the amount be released to their advocates.

7. The law is clear on how a judgement can be amended. What the applicants are seeking to do is to try to obtain orders which will suit their convenience without regard to the law. This application was principally brought on the ground that the applicants needed the money to beat the 60 days period they were granted by the Court of appeal. That period has long passed and that period was just an excuse for the applicants to access the money without following the law. The applicants ought to have extracted a decree to enable them access the money. They cannot just say that they came to the court because there is a pending application seeking to review and or amend the judgement by the Respondent in this case which has made it difficult for them to extract the decree.

8. The applicants' application is a clear abuse of the process of the Court. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered this at *Nairobi* this *20th* day of *April 2017*

E. O.OBAGA

JUDGE

In the absence of advocates who were aware of date and time of delivery of Ruling

Court Assistant: Hilda

E. O OBAGA

JUDGE