



**Patel v Trust Bank Limited (In Liquidation) (Civil Application
205 of 2012) [2022] KECA 65 (KLR) (4 February 2022) (Ruling)**

Neutral citation: [2022] KECA 65 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 205 OF 2012
HM OKWENGU, MSA MAKHANDIA & S OLE KANTAI, JJA
FEBRUARY 4, 2022**

BETWEEN

VINOD PATEL APPLICANT

AND

TRUST BANK LIMITED (IN LIQUIDATION) RESPONDENT

(Application under sections 3A & 3B of the Appellate Jurisdiction Act, Rule 1(2), 42, 43 & 47 of the Court of Appeal Rules, Order 25 Rule 5 of the Civil Procedure Rules 2020, other enabling provisions of the law and the inherent powers of the Court, for release of money held in the joint account of LJA Associate advocates and Shapley Barret advocates as per the consent order of 25th October, 2012)

RULING

1. By a notice of motion dated 23rd October, 2019, Vinod Patel the applicant in the motion, who was the 3rd respondent in Civil Appeal No. 16 of 2015, has moved this Court for orders that the monies held in Guardian Bank Account No. 0300019169 in the joint names of LJA Associates and Shapley Barret Associates be released to his advocates LJA Associates, and costs of the motion be awarded to him.
2. Trust Bank Limited (in liquidation) (the Bank), was dissatisfied with the judgment of the High Court in which the suit against the applicant was dismissed, and costs taxed at Kshs. 17,002,770. The Bank filed Civil Appeal No. 16 of 2015 against the applicant and applied for an order of stay of execution pending the hearing and determination of the appeal.
3. Following a consent arrived at between the Bank and the applicant, the Bank deposited the taxed costs into a joint account in Guardian Bank in the joint names of the Bank and the applicant, pending the hearing and determination of the appeal.



4. The applicant urges that following the dismissal of Civil Appeal No. 16 of 2015, the amount deposited in the joint account should be released to him, but the Bank has declined to release the money and has instead filed an application for review of the judgment, hence the applicant's motion
5. In response to the applicant's motion, the liquidation agent of the Bank Micah Lekeuwan Nabori (Nabori), filed affidavits objecting to the applicant's motion. In a further replying affidavit sworn on 4th June, 2020, Nabori deponed that he believes that the applicant, Vinod Patel is not alive. Nabori contended that throughout the litigation, the whereabouts of Vinod Patel have not been made known and has never been disclosed to the Bank or the Court, nor has the applicant ever sworn any affidavits in support of any of the applications filed in Court.
6. Nabori depones that she filed an application for review of the judgment delivered by this Court on 27th September, 2019 on the basis that the Court had no jurisdiction to grant any relief to the applicant as he was dead at the time the judgment was delivered; that Vinod Patel has not responded to the said application to dispute the allegation that he is dead, or to confirm that he is alive; that the applicant's advocate who has sworn an affidavit in support of the motion has not stated anywhere that he has authority of Vinod Patel to swear the said affidavit, nor has the advocate stated the whereabouts of Vinod Patel or denied the contention that he is dead.
7. It is of interest that although Mr. Andrew Mukite Musangi, the advocate who filed the motion for the applicant, swore a replying affidavit on behalf of the applicant, in response to Nabori's affidavit, counsel has not specifically addressed the issue whether the applicant is alive or dead. Instead, counsel has dwelt at length in justifying why the affidavit sworn by counsel instead of the applicant, is properly before the Court. Thus, the alleged death of the applicant Vinod Patel, has not been countered.

Under Rule 99 of the *Court of Appeal Rules*, the death of a party to an appeal does not cause the appeal to abate, but the legal representative of the deceased party must be made a party in place of the deceased party.

8. Rule 99(2) of the Court Rules provides that if no application is made within 12 months from the date of death of the deceased party, for the legal representative to be made a party, the appeal shall abate. In this case, the death or existence of the applicant is a matter which is specially within the knowledge of the applicant's counsel. According to the application's motion the applicant requires the money to be released to his advocates LJA Associates, but, no advocate from this firm has sworn any affidavit to categorically reiterate the existence of the applicant and instructions to them.
9. As already observed Mr. Mukite Musangi who filed the applicant's motion has not specifically denied the alleged death of the applicant. This Court has therefore no reason to disbelieve the affidavit sworn by Nabori that Vinod is deceased. That being the position, we agree with the Bank that the Court has no jurisdiction to entertain an application by the applicant who is a deceased party without his legal representative being made a party. Moreover, the applicant's advocates have not satisfied this Court that they have proper instructions to prosecute the applicant's motion or authority to have the money released to AJA Associates.
10. In the circumstances, the applicant's notice of motion dated 23rd October 2019 is not properly before us and the same is struck out with costs to the respondent Bank.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2022.

HANNAH OKWENGU

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JUDGE OF APPEAL



ASIKE MAKHANDIA

.....

JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

