



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 951 OF 2013**  
**BETWEEN**  
**JASPER NYABOGA.....CLAIMANT**  
**VERSUS**  
**PARTY OF NATIONAL UNITY.....RESPONDENT**  
**RULING**

The Claimant made an application dated 6<sup>th</sup> August 2013, seeking for an order of garnishee against the Respondent, for the sum of Kshs.4,639,625 as security for the sum claimed as gratuity payment by the Claimant.

The Court issued the Order on 6<sup>th</sup> August 2013.

The Order was made absolute on 9<sup>th</sup> December 2013. The specific order sought by the Claimant's Advocates in the application dated 6<sup>th</sup> August 2013, prayer No. 3 was that:-

“At the *inter partes* hearing of this application, the garnishee order *nisi* be made absolute, and the monies attached be released to the Claimant's/Decree Holders Advocates Mohammed Muigai Advocates, to satisfy the decretal debt outstanding at the time of the determination of these proceedings”.

When Mr. Khaseke for the Claimant, Ms. Maina for the Respondent and Mr. Ngare for the Garnishee appeared in Court on 9<sup>th</sup> December 2013, it was submitted by Mr. Khaseke, and the Court confirmed, that the application dated 6<sup>th</sup> August 2013 was unopposed. The Court made the following orders:-

1. Order for Garnishee is confirmed.
2. The amount of Kshs.4,636,625 held by the garnishee to be released to the Claimant forthwith.
3. The application dated 2<sup>nd</sup> September 2013 to proceed shortly.

The order No. 2 appears to have been misunderstood by the parties and is the subject of an application for review filed by the Respondent, dated 9<sup>th</sup> January 2014. The Respondent seeks the money be refunded or be deposited in Court.

The understanding of this Court is that the money was to be released to the Claimant's Advocates, not the Claimant in person. Prayer No. 3 of the Claimant's application dated 6<sup>th</sup> August 2013 was that the money be released to the Claimant's Advocates, so that reference to the Claimant in the subsequent Orders of 9<sup>th</sup> December 2013, would only have meant Claimant's Advocates.

The Claimant has not obtained any Award from the Court, and orders given as sought by the Claimant through his Advocates, were only provisional, meant to ensure he is able to access terminal benefits and/or compensation that may be awarded by the Court after the finalization of the hearing. He is represented by a Firm of Advocates, and all communication between him and the Court is through his Advocates. When the Court gives an order for payment of money to a party who is represented by an Advocate, the Advocate should be in a position to understand the nature of the payment. The Claimant's Advocates would have no reason to release the money to their client. This was not intended by their application, and the series of orders given by the Court. It is money that should be retained by Mohammed and Muigai Advocates. The proceeds of the pre-hearing execution can only serve as security pending full hearing and determination of the dispute, not be taken as a settlement cheque in the substantive dispute.

It must be noted there have been numerous applications which have resulted in several orders issued. The Respondent has not complied with most of the orders. The initial orders were for security to be deposited in Court. There was no compliance, and the Claimant applied to execute, asking that the security be released to the Claimant's Advocates. There was an opportunity granted to the respondent to deposit security in Court, but once the orders of execution issued in default, there would be no reason for the Respondent to seek the money to be deposited in Court or in the joint names of the Advocates.

It is also noted that there is no evidence from the Respondent to show that the Claimant's Advocates have released the money to the Claimant. Prayer No. 4 of the Respondent's application of 9<sup>th</sup> January 2014 states:-

*"In the event the Claimant has already received the money ....."*

In this respect the application for review, may be taken as seeking clarification on the orders of 9<sup>th</sup> December 2013, rather than seeking review of an established position. Such clarification has been given in this ruling.

*Against this backdrop the Court Orders:-*

***(a) The sum of Kshs.4,636,625 shall be retained by the Claimant's Advocate as security for the Claimant's Gratuity Payment.***

***(b) The Claimant's Advocates to ensure the said money is in their Advocate-Client Account before any further step can be taken in prosecution of the Claim.***

***(c) No order on the costs.***

**Dated and delivered at Nairobi this 3<sup>rd</sup> day of March 2014**

**James Rika**

**Judge**