



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

WINDING UP CAUSE NO. 2 OF 2010

ISAAC RODROT.....APPLICANT

VERSUS

HANS JUERGEN LANGER.....RESPONDENT

Coram: R. Nyakundi

Mr. Munyithya for Applicant

Mr. Ndegwa for Applicant

RULING

Before me is a notice of motion expressed to be brought under Section 51 of the Advocates Act 15 1A, 1B and 3A of the Civil Procedure Act seeking the following orders:

The statement of case

The applicant commenced a taxation for the bill of costs before the Deputy Registrar, culminating into a certificate of costs issued on the 11.2.2019. The applicant contends that the respondent has not made any attempts to satisfy the prescribed amount in the decree. It was the applicant averment that the respondent, being in breach to satisfy the decree calls for entry of Judgment by the court to facilitate execution and enforcement of the decree within the terms under the Civil Procedure Act and Rules.

The Respondents response is contained in the replying affidavit filed in court on **6.2.22020**. Additionally, he pointed out the genesis touching on the litigation in **HCC 118 of 2009** which in his view disentitles the applicant of the issued costs. He relied being aware of the existence of the certificate of costs as presented by the applicant.

The real question is whether the applicant has satisfied the threshold for entry of judgment against the respondent.

In the instant case the court places the yardstick on entry of judgment upon the bill of costs and certificate of taxation arising thereto.

It is clear that any objection to the taxation has been overtaken by virtue of the ruling delivered by the court on 21.4.2020. From the certificate of costs, non-payment of the decretal sum occasions a fundamental breach which would lead to entry of judgment.

Having regard into the evidence before me there is no defence in reply to restrain the court from making orders for entry of judgment to give effect to the certificate of taxation. I am satisfied the certificate of taxation fulfills the requirements of statement of claim, capable for this court to enter judgment against the respondent. I find no bonafide defence set up by the affidavit sworn by the respondent in order to bar the motion, for it is trite law that feigned issues are not sufficient.

On consideration of the matter as a whole, I grant the orders sought as prayed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 22ND DAY OF MARCH 2020.

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R. NYAKUNDI

JUDGE

In the presence of:

1. Mr. Mkomba Advocate for the Applicant