



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA

CIVIL CASE NO. 6 OF 2013

MALUKI MWENGA.....APPELLANT/RESPONDENT

VERSUS

KITHEKA MBUTHI.....RESPONDENT/APPLICANT

RULING

Before me is a Notice of Motion application dated 26th February 2016 filed by M/s. Musyoka & Muigai advocates on behalf of the applicant KITHEKA MBUTHI, who is the respondent in the appeal.

The application was brought under Order 22 Rules 4 and 5 and Order 51 Rule 1 of the Civil Procedure Rules, as well as section 3A of the Civil Procedure Act (Cap. 21), seeking the following orders:-

- 1. That the Honourable court be pleased to send the decree on costs for execution by the Kyuso Senior Resident Magistrates court.**
- 2. That costs of the application be provided for.**

The application has grounds on the face of the Notice of Motion and was filed with an affidavit sworn on 26th February 2016 by the applicant KITHEKA MBUTHI.

The application has not been opposed. Though the appellant MALUKI MWENGA was served with the application and an affidavit of service sworn on 7th March 2016 by SIMON MULONZYA a process server was filed, he neither filed a response to the application, nor did he appear in court on the hearing date.

On the hearing date of the application, Mr. Nzili for the applicant urged that the application be allowed and orders granted by the court as requested.

In brief, a judgment on appeal was delivered by this court on 9th December 2014 dismissing the appeal of the appellant. The court stated in the said judgment as follows:-

“To conclude, I find that this appeal lacks merits. I dismiss the appeal with costs to the respondent. It is ordered.”

Thereafter, taxation of the costs of the appeal was done by the Deputy Registrar of this court and costs were taxed at Kshs. 96,165/= on 29th July 2015. So far there is no indication that a further appeal has been filed or is in the process of being filed.

From the time costs were taxed on 29th July 2015, the appellant has not paid the amount costs, prompting the filing of the present application by the applicant.

Order 22 rule 4 and 5 confers powers on a court which has issued a decree to send the same for execution by another court. It provides as follows:-

4. The court sending a decree for execution by another court shall send –

(a.) a copy of the decree

(b.) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

(c.) a copy of any order for execution of the decree, or, if no such order has been made a certificate to that effect.

5. The court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the court, for any special reasons to be recorded under the hand of the judge, requires such proof.

Indeed, the Kyuso magistrates court is the court of origin for these proceedings. It is also the court nearest to the ordinary or normal residence of the appellant, who lost his appeal. The application is also not opposed. I thus find no reason to decline the orders sought.

I thus allow the application and grant the orders sought.

Dated and delivered at Garissa this 27th day of April 2016

GEORGE DULU

JUDGE