



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 1020 OF 2014**

**DAVID WANYOIKE GATHUA .....PLAINTIFF**

**VERSUS**

**HOSEA IMBO OWINO.....DEFENDANT**

**RULING**

1. Before me is a notice of motion application dated 17.6.2021 brought pursuant to **Order 9 (A)** and **51** of the **Civil Procedure Rules & Section 1A** and **3A** of the **Civil Procedure Act**, where the Applicant seeks the following orders:

*i. The matter be certified urgent*

*ii. That the firm of Kimani Kahete & Co. Advocates be allowed to come on record in place of Mulandi Kisabit & Associates advocates after judgment has been entered in favour of the Plaintiff.*

*iii. The Plaintiff Applicant be allowed to forcefully execute the judgment delivered by the court on 9.6.2020 against the Defendant Judgement debtor and its agent*

*iv. That the judgment debtor and its agents be forcefully evicted from the suit property Plot No. 37 Kahawa West Phase 2.*

*v. That the county commander of the area to supervise in the enforcement of the orders of this court and to maintain law and order.*

2. The Plaintiff avers that Defendant's application to set aside the judgment was allowed on condition that he was to pay throw away costs of Kshs 27,400/- within 60 days, of which Defendant failed to meet the condition set by the court.

3. The Respondent on the other hand states that he duly paid Kshs. 27,000 to his advocate who issued a cheque to the firm of Mulandi Kisabit advocates and the cheques was not returned.

4. I have perused the ruling of the court dated 1.3.2021 and indeed the Judge directed the Defendants to pay the sum of Kshs. 27,400 within 60 days failure to which the order setting aside the *ex-parte* judgment would lapse. As at the time of delivery of the said ruling, the advocates on record for Plaintiff were Mulandi Kisabit and Associates.

5. The Defendant has availed annexure "HIAI" which are a bank slip for Kshs. 27,400 paid into the ABSA account of Oloo & Oloo Advocates for Defendant, a cheque of Kshs. 27,4000 drawn in favour of Mulandi, Kisabit & Co Associates dated 1.4.2021 and a letter of 8.4.2021 from Oloo & Oloo advocates forwarding the cheque to Mulandi Kisabit & Associates.

6. There is nothing to indicate that the cheque was ever returned or not honoured. To this end, I find that there was compliance with the court order.

7. I am however inclined to allow the firm of Kimani Kahete advocates to come on record for Plaintiff since legal representative is a right.

8. Thus the application is allowed in terms of prayer 2 only. The other prayers are declined and the Applicant is condemned to pay costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

M/S Kakame holding brief for M/s Oloo for the Respondent

M/S Thuo holding brief for Mr. Kimani for the Plaintiff

Court Assistant: Eddel Barasa