

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISCELLANEOUS APPLICATION NO.168 OF 2014

OTIENO, YOGO,OJURO & COMPANY ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

MADAM R. ENTERPRISESCLIENT/RESPONDENT

R U L I N G

The applicants prays in their application dated 4.10.14 that the certificate of costs issued by this court on 3.10.14 be converted into a decree and judgment of the court. The same is premised on the affidavit of ERC OTIENO OJURO sworn on 9.10.14 in which he has attached a certificate of costs dated 3.10.14 for the sum of Kshs.390,176,217.58.

The respondent has filed grounds of opposition dated 29.1.15 in which it states that there is a pending Reference and consequently it is premature for the applicant to seek the prayers in the application. It further refers to a consent order dated 30.10.14 in which the parties allowed the respondent to prosecute its Reference out of time.

I have perused the application and in particular the consent dated 30.10.14. Apart from allowing the reference to be filed out of time the parties agreed under paragraph (e) and (f) as follows:

(e) “ The applicant /client do pay to the respondent/advocate the sum of Kshs.471,000 within 30 days from today.”

(f) “On payment of the sum of Kshs.471000 in terms of order number

(e) there shall be stay of execution and or recovery proceedings of the taxed costs of Kshs.390,176,217.58/= but in default, execution and or costs, recovery proceedings shall issue.”

From the applicants submissions it appears that the respondent failed to comply with principle (e) of the consent. At any rate the respondent did not demonstrate to this court whether it had indeed paid the agreed sum of Kshs.471,000 within the 30 days stipulated.

In the absence of compliance, with paragraph (e) of the consent I am unable to find any plausible reason to disallow the application. This court cannot interfere with the consent by the parties unless it is proved that the same was entered as a consequence of fraud or mistake.

Consequently I shall allow the application dated 23.10.14 with costs to the applicants.

Dated, signed and delivered this 16th day of November 2015

H. K. CHEMITEI

J U D G E