



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO**

Civil Case 13 of 2009

EXPRESS AUTOMOBILE (K) LTDPLAINTIFF

VERSUS

KENYA FARMERS ASSOCIATION LTD

LIFEWOOD AUCTIONEERS LTD DEFENDANT

RULING

I: Background

1. This suit was filed on 18th February, 2009 touching on distress of rent. A subsequent application for an injunction was not granted.
2. The defendant thereafter purports to apply an interlocutory judgment. This interlocutory judgment application request was not on the file nor did the Deputy Registrar of the High Court actually endorse the file on this request.
3. The advocate wrote a letter to the new advocate for the Plaintiff and prayed that within ten (10) days they will indeed execute the judgment of the court.
4. The fact remains that no such interlocutory judgment was on record.

II: Explanation by advocate

5. The advocate for the defendant claimed that he had sent another advocate to file to execute the same. He was under the impression that interlocutory judgment had been entered and recorded.

III: Opinion

6. The advocate did not extract the decree on the interlocutory judgment. That after a decree is extracted, then a notice of ten (10) days be issued on intention to execute.
7. I do not find that the conduct of the advocate in issuing such letter was done in good faith.
8. I hereby hold that this matter be referred to the Advocates Complaints Commission and thereby investigate further the advocate of issuing purported orders that did not exist on the court file.

DATED this 13th day of May, 2009 at **KERICHO**

M. ANG'AWA

JUDGE

Advocates

Plaintiff/applicant – present in person

C.P. Nyamwange advocate from the firm of M/S Masese & Nyamwange

advocate for the defendants/respondents – present

Court as before

Application 8.5.09 is pending.

Applicant in person the matter be stayed until the Petition is heard.

Mr. Nyamwange – The application be stood over generally. The issues raised in the petition you should not file.

On mistake belief that there was interlocutory judgment we will not take any action of HCC. 13/09.

M.A. ANG'AWA

JUDGE

COURT – This matter stood over generally pending report from the advocate complaints commission and the constitution reference.

M.A. ANG'AWA

JUDGE

13.5.09