



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 687 of 2005

KENYA TOURIST DEVELOPMENT CORPORATION....PLAINTIFF

VERSUS

WILLIAM B. ARAP CHELASHAW.....DEFENDANT

R U L I N G

The Plaintiff/Decree-Holder has complained by letter dated 21st December, 2006 addressed to the court that the registrar has refused to issue a notice to show cause for service upon the Defendant/Judgment-Debtor upon an application for execution of decree. The basis for the refusal to issue the notice to show cause appears to be that there is no separate certificate of costs duly issued by the registrar. The matter therefore came up for mention before the court on 22nd January, 2007.

Rule 8 (1) of Order 20 of the Civil Procedure Rules (the rules) provides as follows:-

“8. (1) Where the amount of costs has been –

- (a) agreed between the parties; or**
- (b) fixed by the judge or magistrate before the decree is drawn; or**
- (c) certified by the registrar under paragraph 68A of the Advocates (Remuneration) Order; or**
- (d) taxed by the court, the amount of costs may be stated in the decree or order.”**

Sub-rule (2) of the same rule further provides:-

“(2) In all other cases, and where the costs have not in fact been stated in the decree or order in accordance with sub-rule (1), after the amount of the costs has been taxed or otherwise ascertained, it shall be stated in a separate certificate to be signed by the taxing officer, or, in a subordinate court, by the magistrate.”

Decree herein was issued on 13th September, 2006. Paragraph 2 thereof states the amount of costs as KShs. 234,267/00. Mr. Gitonga, learned counsel for the Decree-Holder, submits that the certificate of costs is incorporated in paragraph 2 of the decree in accordance with paragraph (c) of sub-rule (1) of rule 8 above-quoted. But that paragraph of the decree does not state that the costs have been duly certified

under paragraph 68A of the Advocates (Remuneration) Order. Without a certificate of costs it cannot be readily known whether the amount of costs was agreed between the parties or fixed by the judge or certified by the registrar under paragraph 68A of the Advocates (Remuneration) Order or taxed by the court. Those costs cannot therefore be said to have been stated in the decree in accordance with sub-rule (1) of rule 8 quoted above. It is necessary for the record to show how the costs were arrived at. For the sake of clarity, and for the avoidance of doubt, it is necessary for a proper certificate of costs to be duly issued by the registrar. Let the Decree-Holder therefore apply for the same as provided for in rule 68A of the Advocates (Remuneration) Order. It is a simple enough thing for the Decree-Holder to do. That will enable the registrar to see if the costs of the suit have been calculated in accordance with item 15 of Schedule 6 of the Advocates (Remuneration) Order. It is the registrar's discretion whether or not to issue a certificate of costs under Rule 68A aforesaid.

In the circumstances, I will decline to direct issuance of the notice to show cause as requested at this stage. No orders as to costs. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF JANUARY, 2007.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 26TH DAY OF JANUARY, 2007.