

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL DIVISION, MILIMANI

Civil Case 4 of 2003

ARTHUR K. IGERIA

T/A IGERIA & CO. ADVOCATES.....PLAINTIFF

VERSUS

ERNEST KAHIRO KIMANI & ANOTHER.....DEFENDANTS

R U L I N G

This matter is for settlement of decree, though it has not been referred to the judge strictly in the manner provided under Rule 7 (4) of Order XX of the Civil Procedure Rules (the Rules). But the Defendants were served with due notice to appear in court on 13th May, 2005, and they did not. Judgment was entered by consent on 8th November, 2004 in the following terms (Mutungi, J.):-

“By CONSENT the Plaintiff’s application of 5th July, 2004 (which sought judgment for costs, inter alia) be allowed as follows:-

(a) Respondents to pay the applicants costs of the O.S.

(b) The quantum of costs to be agreed or taxed.

(c) Interest on costs to accrue at 14% if the costs as agreed or taxed are not paid within 30 days from the date of taxation.”

Under Rule 6(1) of the same Order the decree must agree with the judgment, inter alia. It seems to me that the decree as filed by the Plaintiff does not agree with the judgment, and the Defendants properly took objection to it. Let the Plaintiff draw a draft decree in such a way that it will fully agree with the consent judgment and then strictly follow the procedure set out in subrule (2) of Rule 7 aforesaid. If there is no approval by the Defendants of the draft decree or if there is disagreement, the Deputy Registrar may act as provided in sub rule (3) of the rule. If circumstances so warrant the matter may be placed before a judge as provided for in subrule (4) of the rule. It is so ordered. There will be no order as to costs.

DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF JUNE, 2005.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 10TH DAY OF JUNE, 2005.