



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
HCCC NO. 22 OF 2001

DR. BONIFACE OOKO GANDA ::: PLAINTIFF

VERSUS

STANLEY MAINA & ANO. ::: DEFENDANTS

RULING

This matter came for hearing of formal proof on 23rd March 2004 as directed by the Deputy Registrar on 19th December 2003. Ms Odede for the plaintiff was present, while there was no appearance for the defendant.

When the matter was mentioned, Ms Odede submitted to the court that the defendants were served with the plaint and summons but they neither entered appearance nor filed defence. She submitted that, in terms of order 9 rule 3 of the Civil Procedure Rules, judgment was applied for on 9th July 2002 for kshs.691,400/= as claimed in the plaint. On 10th July 2002 judgment was entered. On the 15th April 2003 a bill of costs was filed and the same was taxed at Kshs.83,990/=. The plaintiff then sought to have a decree and certificate of taxation. Thereafter the Deputy Registrar sent a strange letter from the registry requiring that the plaintiff lists the matter for formal proof. She requested that this court makes an order directing the Deputy Registrar to sign and certify the decree and certificate of costs. It was her submission that the claim was for a liquidated sum and therefore the law does not require that the matter be listed for formal proof.

Looking at the claim in the plaint as well as the decree, I finds that the claim is as follows:-

- (a) value of car less salvage Kshs.600,000/=
- (b) Loss of user at Kshs.2000
- @ day Kshs.40,000/=
- © Towing charges (lari to Nairobi) Kshs.40,000/=
- (d) Assessors charges Kshs.11,000/=

The above is the amount that Ms Odede submits, is a liquidated claim. I am afraid, I do not agree with that argument. In Black's Law Dictionary Seventh Edition, a liquidated claim is defined as "a claim for an amount previously agreed on by the parties or that can properly be determined by operation of law or by the terms of the parties agreement." The amounts listed in the plaint were never previously agreed between the parties nor are they determinable by operation of law. All the amounts listed ie for the value of the car, loss of user, towing charges, and assessors fees can only be established or proved by way of

evidence.

I therefore decline to order the Deputy Registrar to issue certificate of decree and certificate of costs as requested. I order that the case will go for formal proof for the amounts of each claim to be proved by way of evidence. It is so ordered.

Dated and delivered at Eldoret this 26th Day of April 2004.

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George Dulu

Judge.

Delivered in the presence of :-

Keter for Plaintiffs.

No Appearance for Defendant

George Dulu

Judge.

(I certify this a true copy of the original)

DEPUTY REGISTRAR