



**Kioko v Tipper Haulers (Civil Appeal 129 of 2017)
[2025] KEHC 12979 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12979 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL 129 OF 2017
TM MATHEKA, J
SEPTEMBER 19, 2025**

BETWEEN

JOSEPH KIOKO APPLICANT

AND

TIPPER HAULERS RESPONDENT

RULING

1. Before me is the application dated 2nd March 2025 seeking that:

That this honourable Court be pleased to make a declaration that the Judgement/Debtor/
Applicant fully settled the Decretal amount in full

2. The Application is supported by the affidavit of Said Rashid sworn on the same date and the grounds
on the face of the application: he states inter alia ;

That pursuant to Warrants of Attachment dated 12th November, 2024 in Kilungu
Magistrate Court No. 35 of 2014, where the Judgement Debtor was ordered to pay the
decretal amount of Kshs. 322,517/=. The Judgement Debtor duly complied and settled the
decretal amount vide four cheques totaling to Kshs. 322,617/=

That the Judgment Debtor/Applicant indeed fully complied by settling the decretal
amount in full and is apprehensive that the Decree Holder/Respondent now indicates that
some amounts which the Judgement/debtor/Applicant is a stranger to, still remains unpaid.

That the Decree Holder/Respondent, acknowledged receipt by signing against the said
cheques. The cheques have since cleared. Copies of the cheques and warrants are annexed
to the affidavit.



3. The application is opposed by the replying affidavit of Elizabeth K Isika Advocate for the Respondent sworn on 11th March 2025 to the effect that they received the sum of Kenya shillings 322,617 for the decretal sum in Kilungu PMC 35 of 2014 which was due pursuant to the judgment of this court in this appeal.
4. That the court also directed that their appellant would be paid costs below and the costs of the appeal .That the execution that triggered the application before court was with regard to the costs of the appeal because the request by their respondent to have their costs settled together with the decretal sum was not fruitful.
5. Both the judgment of this court in this appeal and the decrees have been annexed.
Parties find submissions
6. The applicant set out four issues for determination:
 - i. Whether the applicant has fully settled the decretal amount in Kilungu PMCC35 of 2014
 - ii. Whether the current execution is irregular and amounts to abuse of the court process
 - iii. Whether the appellate costs claimed by the of respondent were demandable without notice or formal quantification
 - iv. Whether the applicant has established sufficient grounds for stay of execution and a declaration
7. It is submitted that the respondent admits that the decretal sum was settled. It is also submitted that with respect to the execution no evidence has been adduced to show any formal demand for payment of the appellate costs to the applicant before execution commenced.
8. The applicant relies on *CFC Stanbic Bank Ltd v John Maina Gitthaiga & Another* [2013]eKLR, the Court emphasized:

“A certificate of costs is not itself a demand. The decree-holder must take steps to formally notify the judgment-debtor before taking out warrants”
9. In addition, there is no evidence that the certificate of costs was ever served upon the applicant neither is there evidence that the applicant was invited to the taxation or participated in it *Mugo & Others v Wanjiru & Another* [1970] EA 482, the Court of Appeal emphasized that:

“Execution can only be founded upon a valid decree; costs must be taxed and the decree must incorporate the certificate of costs before enforcement can follow.”
10. That the attempt to enforce a new certificate of costs through a previous decree in Kilungu PMCC 35 of 2014 was fundamentally flawed as there must be separate decrees of separate proceedings where the appellate costs are involved; that this particular execution was not only unlawful but improperly founded on a flawed understanding of what is owed.
11. The respondent raised one issue for determination: whether the sum of Kenya shillings 322, 617 paid by the applicant constitutes full and final settlement of the entire decretal amount including appellate costs.
12. It is admitted by the respondent that the applicants were not served with the demand for payment of the appellate costs because they were sent a demand letter through their official email and the



respondent was unable to challenge the allegation as the evidence of the said service was not exhibited in their replying affidavit.

13. On whether failure to serve the demand before execution exempts the respondent from paying the costs of their appeal which are not disputed, it is submitted that the failure to serve is a procedural defect which is not fatal but curable just like in any other case where the suit is filed without notice all the plaintiff loses are the costs of the suit.
14. The Respondent then relies on *Interstate Logistics Limited versus Manzi* Civil appeal 187 of 2019 [2023] KEHC 4 KLR where the Court stated:

... There is no indication that the appellant settled the costs of the taxation or that a reference has been preferred in respect of the ruling on taxation. It is therefore fallacious for the appellant to claim that it is not aware of the alleged costs of appeal indeed it is plain that since taxation took place on November 10th 2021 and a ruling given on March 9 2022 it cannot be true that the amounts were paid for vide the two cheques dated January 23rd 2021 and January 25th 2021.... Being satisfied as I am that the appellant is yet to settle the costs of the appeal in terms of the certificate of costs dated March 16 2022. It follows that the respondent's application for execution filed herein on March 30th 2022 was proper and the ensuing warrants of attachment and sale as well as the proclamation ... were all warranted. Consequently, the appellant's application dated May 13 2022 is devoid of merit and is hereby dismissed with costs.
15. I have carefully considered the application, the reply, the submissions and the authorities cited by the parties.
16. The only issue for determination is whether the prayer sought is tenable.
17. From the evidence placed before me it is admitted by the respondent that the applicant was not aware of the costs at the appellate stage before the execution took place. The applicant was served with the decree of the decretal sum and costs in the lower court and he settled it.
18. In this matter the decree holder acted without notifying the applicant who did not participate in the taxation because they were never served. I have perused the record and I have not seen any affidavit of service upon the applicant of the bill of costs or the certificate of costs.
19. Evidently the whole process of taxation and execution was flawed and it is gracious of the respondent to admit not to have served.
20. Be that as it may, the respondent is still entitled to their costs as the order of this court (Ong'udi J) was that the respondent would also have the costs of the appeal.
21. The declaration sought that the applicant has settled the full decretal sum and the costs of the suit and the appeal is be available to the applicant. That prayer is declined because the applicant was directed to pay costs of the appeal.
22. However, in order to do things, the right way , the certificate of taxation dated 14th September 2021 be and is hereby set aside together with all the consequent decree.
23. The respondent is to serve the bill of costs upon the applicant and fix it for fresh hearing before the Taxing Master.
24. The applicant will have the costs of this application.



Orders accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 19TH SEPTEMBER 2025

MUMBUA T MATHEKA

JUDGE

Kivihi for Makaka for applicant

N/A for respondent

CA Chrispol

