



Odeny Maube & Co. Advocates v Molyn Credit Limited (Miscellaneous Application E059 of 2021) [2024] KEHC 3891 (KLR) (19 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3891 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS APPLICATION E059 OF 2021
WM MUSYOKA, J
APRIL 19, 2024**

BETWEEN

ODENY MAUBE & CO. ADVOCATES APPLICANT

AND

MOLYN CREDIT LIMITED RESPONDENT

RULING

1. On 6th March 2024, the applicant withdrew an application, dated 11th December 2023. The respondent asked to be paid costs, as it had filed responses to that application, which had, in any event, according to it, been filed in a hurry, as there was some work to be done by the taxing officer, before execution was embarked upon.
2. I have gone through the record herein. On 10th November 2023, I had ruled as follows, at paragraph 6 of the typed ruling:

“Consequently, I hereby enter judgment as prayed, but the amount to be paid ultimately shall take into account any payments already made by the respondent, in respect of which accounts shall be taken before the Deputy Registrar/taxing officer, before execution proceedings are taken out.”
3. Garnishee proceedings are execution proceedings. According to the order above, no execution proceedings are to be taken out, before accounts are taken before the Deputy Registrar/taxing officer on the amounts that might have been paid to or received by the applicant from the respondent. There is no evidence that that had been done, which would make the withdrawn application premature. I agree, it was filed in a hurry, before compliance with the order above.
4. It is trite that costs follow the event. The application was served, was responded to, parties have attended court, and eventually it has been withdrawn. Costs ought to follow the event of withdrawal, and should



be paid to the party who has had to suffer the trouble of filing documents in response and attending court whenever required, needlessly, as it turns out, who, in this case, is the respondent.

5. However, these proceedings became necessary after the respondent failed to pay to the applicant that which it had been adjudged by the taxing officer to pay. Even though it disputes the total figure, it should have paid the adjudged amount, less what it alleges it had paid in advance to the applicant, pending the taking of accounts. Alternatively, it could have deposited the adjudged amount in court, to obviate execution proceedings being taken out. On account of that, I find that the respondent does not have clean hands, and is not entitled to the costs that it prays for.
6. I see that the applicant has filed another application, dated 6th March 2024, to initiate garnishee proceedings against 2 other banks. Before that application is entertained, let there be compliance with the order of 10th November 2023, by way of accounts being taken, of the moneys that the applicant is alleged to have received from the respondent as fees. These 3 matters shall be placed before the Deputy Registrar/taxing officer, on 30th April 2024, for that purpose.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 19TH DAY OF APRIL 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Akinyi, instructed by Bruce Odeny & Company, Advocates for the applicant.

Mr. Achero, instructed by Achero Mufuayia & Company, Advocates for the respondent.

