



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Ogoti (Civil Appeal 123 of 2018)
[2023] KEHC 22556 (KLR) (18 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22556 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL 123 OF 2018
RE ABURILI, J
SEPTEMBER 18, 2023**

BETWEEN

DANIEL KARIUKI APPLICANT

AND

DN OGOTI RESPONDENT

RULING

1. The Decree which the Respondent is executing is not of this court but of the lower court. This Court has no jurisdiction to execute decree of the lower court. I am aware that the Judgment debtor's appeal was dismissed with costs on 23rd September 2020 but the Respondent can only assess and execute for costs on appeal and not to combine the decree of the lower court and costs on appeal in this appeal.
2. Accordingly, I find that the execution proceedings commenced in this appeal for recovery of the damages and costs awarded in the lower court are irregular.
3. The said execution proceedings and the warrant of arrest issued against the appellant Daniel Kariuki on 21st August 2023 by the Deputy Registrar are hereby vacated, set aside and quashed.
4. The lower court record to be returned to the Magistrate's court to enable the execution of decree as appropriate.
5. As the Respondent has since the delivery of Judgment filed a bill of costs which was taxed in 2021 and is at liberty to execute for recovery of the same in this matter; and as the file cannot remain dormant, mention on 24th October 2023 to confirm settlement of the bill of costs as taxed and in default, the Respondent shall be at liberty to apply.
6. Typed Ruling to be supplied to the parties.
7. I so order.



DATED, SIGNED AND DELIVERED AT KISUMU THIS 18TH DAY OF SEPTEMBER, 2023

R. E. ABURILI

JUDGE

