



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**MISC. CIVIL CASE NO. 38 OF 2009 (J/R)**

**REPUBLIC .....APPLICANT**

**BETWEEN**

**THE CHAIRMAN WESTERN PROVINCIAL L.D.T. ....RESPONDENT**

**AND**

**HASSAN MUSAMBAYI MBARUKU.....EX-PARTE APPLICANT**

**R U L I N G**

In his application dated 3.5.2013 the applicant is seeking an order that there be stay of execution and the warrant of arrest against him be lifted. He also would like this court to make an order of the correct decretal sum payable to the decree holder. The application was heard ex-parte and the applicant relied on that application. The application is supported by the applicant's affidavit sworn on the same date. The applicant contends that he was arrested by the police for none payment of the decretal amount. According to him the decretal amount was KShs.88,917/= which amount includes execution costs. When he was arrested he paid KShs.45,000/= and he later paid KShs.10,000/= leaving a balance of KShs.33,917/=. The decree holder has inflated the remaining balance to be KShs.55,716/=.

The record shows that parties sent a consent to the court dated 21.2.2013. On the 22.2.2013 the Deputy Registrar recorded the consent as an order of the court. The contents of the consent was that a sum of KShs.45,000/= had been paid by the applicant herein. KShs.27,858/= was to be paid on or before 30.4.2013 in default of the payment then execution was to issue. The record shows that a sum of KShs.10,000/= was paid to the firm of J. I. Khayumbi & Company Advocates on the 20.4.2013. There is a letter by the firm of J. I. Khayumbi & Company Advocates dated 25.9.2013 addressed to the Deputy Registrar indicating that the balance of the decretal amount was KShs.19,000/=. I will therefore take it that the balance of the decretal amount is KShs.19,000/=. The applicant in his application indicated that the balance was KShs.27,858/=. I presume that there was further payment to the decree holder.

In the end I do order that the applicant pays the decree holder a sum of KShs.19,000/= being the balance of the decretal amount. There shall be no orders as to costs.

Delivered, dated and signed at Kakamega this 16<sup>th</sup> day of October 2014.

**SAID J. CHITEMBWE**

**J U D G E**