

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

CIVIL SUIT NO. 87 OF 2007 (OS

LORD MELVIN JOHN BLACKBURN.....PLAINTIFF

VERSUS

LADY KATHLEEN BLACKBURNDEFENDANT

RULING

1. The Plaintiff's application filed on 21st December, 2011 is brought under Section 1a, 1B, 3A, 63(e) of the Civil Procedure Rules, *inter alia*. It is seeking leave to cite the Defendant for contempt of court and a warrant of arrest against her to show cause why she should not be committed to jail for disobedience of a court order. The application is supported by the affidavit of the Plaintiff, and opposed through a replying affidavit by the Defendant.
2. The subject matter of the application is the consent order recorded by the parties on 8th September, 2011 before the Deputy Registrar. Prior to this date, parties had filed several applications, including one by the Defendant seeking to stay execution of the judgment of Omondi J. delivered on 28th October, 2009.
3. I have now read the affidavits filed with regard to the instant application, the proceedings herein and the detailed consent recorded between the parties on 8th September, 2011. That consent in my opinion was recorded in execution and or mutual modification of the judgment of Omondi J. The consent went further to quantify various payments to be made in furtherance of the judgment.
4. It would appear that the Plaintiff is now aggrieved that a sum of shs. 1Million due to him from the Defendant is still outstanding. This court cannot determine such matters without a proper taking of accounts. In my considered view the present application is a disguised application for execution of the judgment herein.
5. The proper course of action is for the Plaintiff to extract the decree and commence execution proceedings before the Deputy Registrar in the usual way. For these reasons I decline the Plaintiff's application dated 21st September, 2011 and dismiss it with costs.

Delivered and signed at Malindi this **4th** day of **November, 2013** in the presence of Mr. Mwadilo for the Plaintiff. No appearance for Defendant.

C. W. Meoli

JUDGE