

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
MISC. APPLICATION NO. E198 OF 2025

MODZEST LTD T/A

ISTIKBAL

HOME

FURNITURE.....APPLICANT

VERSUS

EDWARD MICHUKI NJUGUNA.....RESPONDENT

RULING

1. Through a Notice of Motion dated 20th June 2025, the Applicant seeks the following orders:

- a) *THAT Judgment be entered in the sum of Kshs. 146,750.00/= for the party-and-party costs assessed by the trial court in MCELRC NO.E1339 of 2021 on 08/10/2024.*
- b) *THAT the Certificate of Stated Costs issued on 28/05/2025 be adopted as a Judgment of this court, a Decree be issued in respect thereof and the Applicant be at liberty to execute for recovery of the same in such manner as a Decree of this Honourable Court.*
- c) *THAT the Respondent do pay costs of this Application.*

2. The Application is premised on the grounds set out therein and by the depositions contained in the Supporting Affidavit sworn on 20th June 2025 by **Victor Ajwang**, Advocate on record for the Applicant.
3. Mr. Ajwang deposes that the Respondent, who was the Claimant in **MCELRC No. E1339 of 2021; Edward Michuki Njuguna v Modzest Limited T/A Istikbal Home Furniture**, withdrew the said suit by a notice of withdrawal dated 3rd April 2023, following which the Applicant was awarded costs.
4. He avers that the Applicant's Party-and-Party Costs in the said suit were duly assessed by the Court at Kshs. 146,750.00 on 8th October 2024, in accordance with paragraphs 51 and 52 of the Advocates Remuneration Order, 2014, but the Respondent has failed to satisfy the same.
5. Mr. Ajwang further states that the Applicant obtained a Certificate of Stated Costs, which was duly issued on 28th May 2025. He adds that, despite service of the Certificate upon the Respondent's Advocates, the Respondent has failed, refused, and/or neglected to settle the costs awarded to the Applicant.

6. He further avers that the Applicant is unable to execute the Certificate of Stated Costs in its current form, as it does not constitute a court decree capable of execution.

7. Upon service of the Motion by the Applicant, the Respondent, through its Advocate on record, filed Grounds of Opposition dated 3rd October 2025, contending that:

a) THAT the application herein is fatally defective as there is no provision in Law that requires the filing of such an application pursuant to an order on costs emanating from a Judgement of the lower court and on this ground alone this application ought to be dismissed with costs.

b) THAT the plaintiff/applicant has not laid down any basis for grant of the orders sought as such the application should be dismissed with costs.

c) THAT the subject application is bad in Law, an abuse of the Court process, frivolous and vexatious and ought to be struck off with costs.

Submissions

8. The Motion was canvassed by way of written submissions. Both parties filed written submissions, which the Court has duly considered.

Analysis and Determination

9. I have considered the issues raised in the instant Notice of Motion, the Respondent's Grounds of Opposition and the rival submissions, and the following issues stand out for determination:

a) Competency of the Application;

b) Depending on the answer in (a), whether the Court should enter judgment against the Respondent in terms of the Certificate of Stated Costs issued on 28th May 2025.

Competency of the Application

10. The Respondent has challenged the competence of the instant application on the ground that no legal provision permits the filing of such an application in relation to costs awarded by the subordinate court.

11. Ordinarily, the element of party-and-party costs is incorporated into the court's final award and constitutes the Court's final decree.

12. In the present case, however, no monetary award was issued by the subordinate court as the matter was withdrawn before any determination could be made.

Consequently, the costs awarded to the Applicant following the withdrawal of the claim constituted a standalone enforceable order, and the Applicant only needed to apply for a decree within the same case file.

13.As such, the Applicant did not need to move this Court as it has done through the present Application in order to obtain a decree.

14.For the foregoing reasons, the Notice of Motion dated 20th June 2025 is hereby dismissed with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 11th day of December 2025

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Ajwang instructed by Mr. Olao for the Applicant

Ms. Wachanga for the Respondent

Mohamamed Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of **the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE