

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MILIMANI

MISC. APPLICATION NO. 84 OF 2018

BEATRICE OKOTH.....APPLICANT

=VERSUS=

FRANCIS PIUS OMWERI NYABERI

REBECCA NYABOKE OMWERI

T/A TOPLAND MOTORS

AND GENERAL AGENCIES.....RESPONDENTS

RULING

1. The Applicant filed a Notice of Motion dated 24th May, 2018 in which she sought entry of Judgment for the sum of Kshs.34,650/= being taxed costs arising out of Nairobi Court of Appeal in Civil Application No. NAI 242 of 2013 (UR 20/2013). The Respondents herein had filed an application before the Court of Appeal seeking extension of time to file and serve a record of Appeal out of time. That application was dismissed with costs to the Respondent.

2. The Applicant who was the Respondent in the Court of Appeal filed a bill of costs which was taxed and a certificate issued accordingly. The Applicant has now moved to this Court seeking to have the taxed costs entered as a judgment.

3. The Respondents have opposed the Applicant's application based on a Replying Affidavit sworn on 13th June, 2018. The Respondents contend that this Court lacks jurisdiction to enter a judgment in respect of a matter arising out of the Court of Appeal; that the application is an abuse of the process of the Court and that the Applicant cannot seek costs from them when she has not paid them costs arising from Court of Appeal at Nairobi in Civil Application No. 36 of 2018.

4. I have considered the Applicant's application as well as the opposition to the same by the Respondents. What was before the Court of Appeal was a party/party bill of costs. It was not an Advocate/Client bill of costs. Under Rule 108(2) of the Court of Appeal Rules the decision of the Court directing taxation and the certificate of the taxing officer shall for purposes of execution be deemed to be a decree. The filing of this application was therefore unnecessary. If it was an Advocate/Client bill of costs then by virtue of Rule 111 (3) of the Court of Appeal Rules, the Application for entry of judgment would have arisen.

I therefore find that the Applicant's application is an abuse of the process of the Court. I dismiss the same with costs to the Respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 16th day of May, 2019.

E.O.OBAGA

JUDGE