



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ITEN

ELC MISC. APPLICATION NO. E001 OF 2025

MORGAN OMUSUNDI T/A

MORGAN OMUSUNDI LAW FIRM

APPLICANT

= VERSUS =

JULIUS KIMETTO 1ST

RESPONDENT

DAVID KIPLAGAT AYABEI 2ND

RESPONDENT

RULING

1. The applicant herein filed the notice of motion application dated 8th August, 2025 seeking the following orders:-

- i) That the certificate of costs issued on 22nd July 2025 in Iten High Court ELC Misc Application No.E001 of 2025 be adopted as decree and/or judgment of this honourable court.
- ii) That the costs of the application be borne by the

respondents.

2. The application is expressed to be brought under **Sections 1A, 1B, 3** and **3A** of the Civil Procedure Act, **Order 51** of the Civil Procedure Rules and all other enabling provisions of the law.
3. The application is premised on the grounds that the bill of costs was filed, taxed and a certificate of costs duly issued on 22nd July, 2025; that the certificate of costs has not been adopted for enforcement; that the application will only lead to execution of the ruling of the court order/decree; and that it has become necessary to adopt this award.
4. The application is supported by the affidavit of Morgan Omusundi, the advocate having conduct of the matter for the applicant sworn on 8th August 2025, in which the grounds on the face of the application are reiterated. The deponent of the affidavit has annexed to the affidavit the certificate of costs sought to be adopted as the decree of this court,

marked **MO1**.

5. Despite having been served with the application, as attested by the affidavit of service of George Ochieng sworn on 31st October 2025, the respondents did not file a response to the application.
6. I have considered the application, supporting affidavit and the annexures and I find the sole issue for determination to be whether the applicant has made up a case for being granted the orders sought. Concerning that issue, the applicant who is in possession of a certificate of costs, seeks a court order adopting the certificate of costs as an an order of this court in order to facilitate execution of the decree for costs issued in his favour.
7. The law on execution of certificates of costs was espoused in **Rubo Kimngetich arap Cheruiyot v Peter Kiprotich Rotich (2006) eKLR** where the court stated/held:-

“It is my view that a Decree duly approved and signed had to be on record for any execution to

take place....As far as the parties in a suit are concerned, a certificate of costs is not an executable legal instrument. A certificate of costs is not capable of being executed. Warrants of attachment and sale cannot in law be issued on the basis of a certificate of costs. There must be a Decree first..."

8. In applying the principles in the above decision to the circumstances of this application, I find the instant application is well grounded in law as it seeks to facilitate execution of the certificate of costs given in favour of the applicant.
9. The same being unopposed, I allow it as prayed.
10. Orders accordingly.

**Dated, signed and delivered virtually at Busia this 12th
day of March, 2026.**

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Gaylord for the Applicant

N/A for the Respondent

Court Assistant; Tracy

ORIGINAL