



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT OF KENYA**

**AT MALINDI**

**Misc. Civil Application No. 9`A' OF 2010**

**OMAGWA ANGIMA & CO. ADV.....APPLICANT**

**=VERSUS=**

**JAPHET NOTI CHARO.....RESPONDENT**

**RULING**

**Introduction**

1. What is before me is the Applicant's Application dated 6<sup>th</sup> December, 2013 seeking for the following orders:
  - (a) **That the respondent's application dated 19.4.2013 be dismissed with costs for want of prosecution and the interim orders of stay granted on 12-7-2012 vacated accordingly.**
  - (b) **That the costs of this application be provided.**
2. The Application is premised on the grounds that the Applicant has been denied costs which were properly taxed 26 months ago; that the taxation itself was never challenged and that no reference from the taxation is pending.
3. The Applicant has further averred that the Respondent has failed to prosecute his Application and that he is enjoying the orders of stay granted by the Court.
4. In his Replying Affidavit, the Respondent deponed that he has offered the Applicant immense financial support; that the Applicant expressed his desire to drop the process of execution of his costs and further expressed his desire for reconciliation and that that is why he has not prosecuted his Application.
5. The parties filed their respective submissions which I have considered.
6. The Motion that the Applicant is seeking to dismiss for want of prosecution is dated 18<sup>th</sup> April, 2011 and not 19<sup>th</sup> April, 2013 as pleaded. In the said Application, the Respondent prayed for a stay of execution of the certificate of costs pending the hearing of the Application. The substantive prayer in that Application is that the execution process be declared null and void in the absence of a decree.
7. When the Application came up for hearing on 20<sup>th</sup> July, 2012, Meoli J granted to the Respondent a stay of execution pending the hearing of the Application. The Application was slated for hearing on 25<sup>th</sup> September, 2012.
8. It would appear that Application never came up for hearing on 25<sup>th</sup> September, 2012 or at all until

- when the current Application was filed.
9. Although the Respondent claims that he has been negotiating with the Applicant for an out of court settlement, no evidence was annexed on the Replying Affidavit to support that averment.
  10. However, considering that the Respondent is disputing the taxed costs, I shall in the interests of justice and fairness give him an opportunity to prosecute his Application dated 18<sup>th</sup> April, 2011 within 30 days from the date hereof, failure to which the Application shall stand dismissed with costs.
  11. In the meantime, the Applicant's Application dated 6<sup>th</sup> December, 2013 is hereby dismissed with no order as to costs.

Dated and delivered in Malindi this **16<sup>th</sup>** day of **May**, 2014.

**O. A. Angote**

**Judge**