

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC. CIVIL APPL. NO. 139 OF 2011

CECILIA WAMBUI KIHARAAPPLICANT

versus

EPHANTUS WAMBUGU WAWERU.....RESPONDENT

RULING

1. By a notice of motion under section 51(2) of the Advocates Act the applicant moved the court for an order that judgment be entered in favour of the applicant against the respondent for the sum of Ksh. 44,955 being the certified cost due to the applicant against the respondent and that the respondent do pay to the applicant interest on the certified cost at 14% p.a. from 25th August 2005 to the date of filing the Bill of Cost.
2. It was supported by the affidavit of CECILIA WAMBUI KIHARA wherein she deponed that on 4th August 2008 she instructed the firm of Wahito and Co. Advocates to act for her in relation to a claim for damages arising out of a road traffic accident on 25th May 2008 and on 19th April 2011 she was awarded Ksh. 93,330/- as general and special damages plus cost and interest.
3. It was further deponed that the respondent paid a sum of Ksh. 93,330/- leaving a balance of Ksh. 44,955 as per the attached certificate of taxation.
4. I must point out that this is party and party cost awarded to the applicant in CMCC No. 473 of 2008 and therefore those costs should have been assessed by the executive officer of the lower court to form part of the decree and certificate thereon which should have been executed on the usual manner.
5. The applicant herein is not an advocate under the provisions of the Advocates Act wherein section 51(2) of the Advocates Act would have been applicable. I therefore find no merit on the application herein which I hereby dismiss for having been brought under the wrong provisions of the law with no order as to cost.

Dated and delivered at Nyeri this 20th day of June 2014.

J. WAKIAGA

JUDGE

Court: Ruling read in open court in the absence of the advocates for the applicant and the applicant.

J. WAKIAGA

JUDGE

20/6/2014