REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 536 of 2010

MUTEMI MULI MUNYAMBU……..……..…...……... PLAINTIFF

VERSUS

ANNAH MWIKALI…...…..…….……..... DEFENDANT

R U L I N G

1. The Plaintiff's previous suit against the Defendant over the same subject-matter (a burial dispute) between the same parties (**Milimani CMCC No 5412 of 2010**) was struck out with costs to the Defendant. Those costs were assessed and certified at KShs 30,340/00.

2. The Plaintiff then filed the present suit. On 7th February 2011 this court (Rawal, J) ordered, *inter alia*, that the Plaintiff do deposit the said costs of the previous suit in the lower court. That was done.

3. Eventually the present suit was heard; in a judgment delivered on 9th December 2011 (Mwera, J) the Plaintiff succeeded fully, but the court directed that the parties meet their own costs of the suit.

4. The Defendant has now applied by **notice of motion dated 25th October 2012** for an order of release of the KShs 30,340/00 to her. She says that the lower court (where the money was deposited) has declined to release the money to her without such an order.

5. The Plaintiff has opposed the application, apparently upon the mistaken notion that the KShs 30,340/00 was deposited as security for costs in the present suit. It was not! The order for deposit of that sum was made after the Defendant applied for stay of the present suit pending payment by the Plaintiff of the Defendant's costs in the previous suit.

6. I cannot myself understand why the court could not have ordered on 7th February 2011 that the Defendant's certified costs of KShs 30,340/00 be paid to her. It instead ordered that the money be deposited in court.

7. What is clear, though, is that costs in the present case have absolutely nothing to do with costs of the previous suit that was struck out. Costs in the previous suit were awarded to the Defendant, and were duly assessed and certified. In the present case the parties were ordered to meet their own costs.

8. Having considered the submissions filed on behalf of the parties, I find absolutely no reason not to allow the Defendant access to her costs in the previous suit, as duly assessed and certified. I will therefore allow the application, but with no order as to costs. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF DECEMBER 2012

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER 2012