

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 595 of 1988

ELIZABETH WANJUGU MUNGARA PLAINTIFF

VERSUS

ANTHONY MAINA KARIUKI 1ST DEFENDANT

MUCHEMI MUGENI 2ND DEFENDANT

RULING

The application before the court is dated 1.8.2011. It seeks a review of the ruling of this court dated 15.10.2010. It also seeks costs of this application.

The Applicant was of the view that this court's order awarding the 1st Defendant herein of Kshs.41,232/-, was an error on the face of the record since the 1st Defendant had already received his full share of refund earlier. The Respondent/Plaintiff has not in her submissions said anything in opposition. I have on my part re-examined the relevant part of the ruling touching on the said share of Kshs.41232/- ordered given to the 1st Defendant and feel persuaded that the applicants view on it is correct. I will accordingly in due course make an order to that end to correct the error.

The second issue which both parties by consent placed before the court for determination is the issue of costs of the application dated 1.8.2011 which was granted by consent of the Respondent.

This court under Section 27(1) of the Civil Procedure Act has discretion to award costs with a rider under Subsection (2) that costs follow the event. In this matter the applicant filed the said application and when it came for a hearing the Respondent conceded it. It cannot be denied accordingly that the applicant won the application. The record shows that the Respondent by a replying affidavit sworn on 21/11/2012, had taken a position which controverted the applicants pleadings. Both parties must have prepared to prosecute or defend the application until the last moment when the Respondent conceded it. The event in this case is that the applicant won while the Respondent lost, the application. The winner therefore should be entitled to costs as I find no reason to exercise my discretion differently. I therefore hereby award to him the costs.

Finally since the application dated 1.8.2011 was by consent granted in substance and orders thereon made, this court finds no reason to go back to it. It stands as granted by consent.

The orders that I should now make accordingly are as follows:-

ORDERS

1. The application dated 1.8.2011 is by consent of both parties granted with costs to the applicant.

DATED and DELIVERED this 3rd day of December, 2012

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D.A. ONYANCHA

JUDGE