



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CIVIL APPEAL NO.66 OF 2000

(Appeal from original BGM CM CC Misc. No.79 of 1999)

SIKUKU STELLA MASONAPPELLANT

~VRS~

BEN KUMBUTI WASILWARESPONDENT

RULING

This is a ruling on the Respondent's application dated 11/09/2010 seeking for review of the decree specifically on the issue of payment of costs of the appeal. It also seeks for orders that the Appellant be condemned to pay the costs of the appeal.

The facts leading to this application are that the Appellant Sikuku Stella Masoni successfully appealed against the orders of the Chief Magistrate, Bungoma adopting the award of the Western Province Appeals Board. The Respondent was condemned to pay costs of the suit on grounds that he is the one who applied for adoption of the award. In his affidavit in support of the application, the Respondent explains that it is the Appellant who sued him in the Lugari Land Disputes Tribunal. Being aggrieved by the judgment of the tribunal, he appealed as a matter of right to the Appeals Board. It is therefore the Appellant who ought to have been ordered to pay the costs of the appeal. The date for hearing of the adoption application was fixed by the counsel for the Appellant.

In his replying affidavit sworn on 25/10/2010, the Appellant argues that the Resident Magistrate Court where he filed the suit no.204 of 1999 lacked jurisdiction leading him to go to the tribunal for the orders. It is the Appellant's submission that the Respondent ought to pay the costs of the appeal.

In its judgment, this court condemned the Respondent to pay the costs of the appeal on grounds that he is the one who took the application for adoption to court. The Appellant was successful in this appeal. Costs follow the event. The Appellant is entitled to costs in the event of a successful appeal except in which the court elects to exercise its discretion. It has been brought to my notice that it is the Appellant who went to the tribunal to arbitrate on title when the tribunal lacked jurisdiction. The tribunal proceedings show that Wilson W. Masoni was the Plaintiff. The tribunal gave orders to sub-divide the respondent's land into two portions. The respondent appealed against the tribunal's decision before the Provincial Appeals Board who confirmed the decision of the tribunal. The correct position is that it is the Appellant who moved the court to adopt the decision of the appeals board. This was contrary to the section of the Land Disputes Tribunal Act. The decision of this court in the appeal is clear on that point. Although the Appellant has won the appeal, he too should bear part of the costs of the appeal in view of the fact that he moved the Chief Magistrate Court to grant the orders dated 10th August, 2000.

The application must therefore succeed. The error apparent on the face of the record is hereby corrected in the judgment for the last line to read:

“Each party to meet their own costs of this appeal.”

F. N. MUCHEMI

JUDGE

Ruling dated and delivered this 9th day of March, 2011 in the presence of Mr. Ocharo for the Respondent and Appellant in person.

F. N. MUCHEMI

JUDGE