

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI

Civil Case 1052 of 2002 (OS)

HARRISON MBUGUA t/a MANTRAD ENTERPRISES.....PLAINTIFF

VERSUS

STELLA K. MUENDO t/a S. K. MUENDO & CO. ADVOCATES.....DEFENDANT

R U L I N G

By a consent order recorded on 18th October, 2005, the amended originating summons dated 22nd December, 2003 was settled, save for the issue of costs. I heard arguments on that issue of costs on 23rd November, 2003.

I have perused the entire record of the court. I have also given due consideration to the submissions of the learned counsel for the Plaintiff and those of the Defendant who was acting in person; the Defendant is an advocate of this court. In the amended originating summons the Plaintiff, HARRISON MBUGUA t/a MANTRAD ENTERPRISES, sought determination of various issues relating to the sum of KShs.14,624,266/94 which the Defendant, STELLA K. MUENDO t/a S. K. MUENDO & COMPANY ADVOCATES, had received on the Plaintiff's behalf while acting as the Plaintiff's advocate. The original originating summons was filed on 4th September, 2002. It turns out that by the 3rd September 2002 the Defendant had already released to the Plaintiff in two instalments and without undue delay about KShs.10,888,799/94 out of the aforesaid sum of KShs.14,624,266/94, and had retained the balance thereof of KShs.3,735,467/00 over which she had a lien for her professional fees. It is therefore not correct that at the time the originating summons was filed the Defendant was still holding onto the entire sum of KShs.14,624,266/94. By an order of this court dated 26th July, 2004 the aforesaid balance of KShs.3,735,467/00 was deposited in a joint account of the Plaintiff's advocates and the Defendant. The bills of costs that the Defendant had prepared in the various matters in which she had acted for the Plaintiffs disclosed that amount. Eventually her various bills of costs were taxed in the total sum of KShs.1,278,511/00. Those taxations were finally settled on 4th May, 2005, thus paving way for the recording of the consent order of 18th October, 2005 already referred to.

Costs are entirely in the discretion of the court, provided that they will normally follow the event, unless the court or judge shall for good reason otherwise order. See section 27 (1) of the Civil Procedure Act, Cap. 21. It appears to me that the Plaintiff was rather rash in filing the originating summons. The Defendant had, by the time the originating summons was filed, released to the Plaintiff the greater portion of the money recovered for him. She had retained only such portion of it, as she had calculated in bills of costs, would cover her professional fees. She then took the necessary steps to have her various bills of costs taxed. I find no misconduct on her part as would have reasonably prompted the Plaintiff to rush to court as he did before the Defendant's bills of costs were taxed. The Defendant does not seek costs. I think in this case it is in the interests of justice that the parties do bear their own costs. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF FEBRUARY, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 3RD DAY OF FEBRUARY, 2006.