



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC. APPLI. NO. 140 OF 2001 (O.S.)**

**IN THE MATTER OF: APPLICATION FOR THE DELIVERY BY THE  
ADVOCATE OF A CASH ACCOUNT**

**BETWEEN**

**CELINA WANZA NJOGU ..... APPLICANT**

**AND**

**JAMES KAMANJA GATHUKU T/A**

**JAMES GATHUKU & CO. ADVOCATES ..... RESPONDENTS**

**R U L I N G**

This is a rare matter brought to court as an originating Summons in which the applicant is suing her former Advocate Mr. James Gathuku (Respondent) for the release of monies he received in trust for her benefit and order totaling to Kshs.923,095/= and which amount the Respondent has failed to pay in full. The hearing commenced on 16.7.2001 before Justice Waki and was heard in bits and pieces for reasons the Judge gave as delaying tactics being employed by the Respondent. However by time the final hearing had commenced before me a further sum of Kshs.200,000/= had been agreed as being due by consent and was to be paid on or before 5 p.m. on 20.7.01. With leave of the Court, the applicant filed a further supporting Affidavit after making several attempts to have the Respondent appear before the court for cross examination with a view to determine how much money he had received on behalf of the Applicant. The supplementary Affidavit was filed on 19.7.02 and no reply to it has been filed.

Mr. Tindika for the Applicant outlined the amounts received and amounts legally due to the Respondent through taxed costs. The same calculation has been set out in the supplementary Affidavit at paragraph 4 and the same is not controverted.

From the Submissions by Mr. Kiarie Kariuki for the Respondent, the only issue in dispute is an alleged agreed party/party costs of 450,000/= No evidence to support the claim has been adduced. I must say, even Mr. Kiarie appeared to have difficulties in countering the said claim. In the absence of any other concrete evidence to controvert the calculations by the Applicant in Paragraph 4 of the Supplementary Affidavit. I find that the amount of Kshs.217,950/= is due to the Applicant from the Respondent. The said amounts plus costs are to be paid to the Applicant through her Advocate.

That is the courts ruling.

**Dated and Delivered at Mombasa this 21st day of February, 2003.**

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**