



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 265 OF 2018

ROSE WAMBUI GIKONYO.....APPELLANT

VERSUS

ISMAEL JUMA MATIKA.....RESPONDENT

RULING

The application before the court is dated 28th September, 2020 by the Respondent seeking for orders that;

- i) That the Appellant be compelled to pay the shortfall of the decretal amount in the sum of Kshs. 197,820.**
- ii) That the Respondent be compelled by this Court to also pay the accumulated costs and interest to be calculated by the Court**
- iii) The costs of this Application be provided for.**

The application is premised on the grounds on the face of the application and supported by the affidavit of Ismael Juma Matika sworn on 28th September, 2020. The application is not opposed by the Appellant.

The Respondent's case is that after successfully prosecuting his suit in the lower court, judgement was entered in his favour as against the defendant for the sum of Kshs. 668,851 plus costs of the suit and interest at court rate. The total decretal amount awarded was Kshs. 866,977.49 inclusive of Kshs. 198,126.59 on account of interest at 12% per annum from 9.4.2015 to 27.9.2017 in a Decree dated 27th September, 2017.

That the appellant had deposited Kshs. 668,851 in court which was a condition precedent for stay of execution pending hearing and determination of her appeal. That after the appeal was dismissed on 24th May 2019, the Court following an application by the Respondent dated 30th July, 2019 released the sum of Kshs. 668,851 deposited in court to the Respondent herein. The respondent is now seeking for the balance of Kshs. 197,820 on account of interest together with costs and interest.

The appellant through her advocate, Mr. Chelule was present in court on 14th December, 2020 and confirmed that Kshs. 197,820 was on account of costs and interest and that the costs and interest before the trial court were assessed earlier and undertook to confirm the assessed costs before the trial court. When the matter came up for hearing on 27th January, 2021 only the respondent was present and submitted that he was seeking payment of the decretal balance. There was no representation for the appellant despite being present when the date was given.

I have exhaustively perused the court file and it is clear that the no costs were assessed in the trial court and hence no certificate of costs issued. The sum of Kshs. 197,820 is on account of interest as listed in the Court Decree of 27th September, 2017.

Order 21 rule 9 of the Civil Procedure Rules provides that

(1) Where the amount of costs has been—

- (a) agreed between the parties;**
- (b) fixed by the judge or magistrate before the decree is drawn;**
- (c) certified by the registrar under section 68A of the Advocates (Remuneration) Order: or**
- (d) taxed by the court, the amount of costs may be stated in the decree or order.**

(2) In all other cases, and where the costs have not in fact been stated in the decree or order in accordance with sub rule (1), after the amount of the costs has been taxed or otherwise ascertained, it shall be stated in a separate certificate to be signed by the taxing officer, or, in a SubLeg Cap. 16 subordinate court, by the magistrate.

In the circumstances of this application, I see no reason why the orders sought herein should not issue. The application dated 28th September, 2020 is hereby allowed and the parties are at liberty to agree on costs failure to which, the respondent should move the court appropriately for assessment of costs before the court's taxing officer.

Dated and Signed at Nairobi this 10th day of March, 2021

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S. CHITEMBWE

JUDGE