



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 826 OF 2016**

**TITUS MWIRIGI.....PLAINTIFF**

**VERSUS**

**IMELDA MURAMBA JUMA**

**(Sued as the Court Appointed Manager &**

**Guardian of the Estate of PROFESSOR**

**FRANCIS DOIL JUMA).....DEFENDANT**

**RULING**

The Plaintiff withdrew this suit through the notice he filed in court on 9/5/2013 indicating that he was withdrawing the suit with no orders as to cost. The Defendant insisted that she wished to be granted costs. The court directed parties to file submissions on the issue of costs.

The Defendant contended that the Plaintiff filed the suit on 18/7/2016 against the Defendant who was not the administrator of the estate of Professor Francis Doil Juma. The Defendant claimed that she pointed out in her defence filed in court in September 2016 why the suit was not sustainable against her and thereafter filed the application dated 6/10/2016 seeking to have the suit struck out. She contended that the Plaintiff sought many mentions of the matter where he kept informing the court that he was waiting for an administrator of the estate of the late Professor Juma Doil to be appointed before withdrawing the suit in May 2019. The Defendant maintained that she was entitled to costs for the withdrawn costs.

The Plaintiff contended that the Defendant was not entitled to costs in view of the fact that the Defendant was all along aware of the demise of Professor Juma which occurred before the suit was filed that but continued to engage the Plaintiff's advocate without disclosing the death of Professor Juma. The Plaintiff urged that in determining the costs the court ought to consider the conduct of the parties, the subject of litigation, the circumstances which led to the filing of the suit, the events that led to the termination of the suit and manner of termination, the stage at which the proceedings were and the relationship between the parties. The Plaintiff urged that his advocate sent a demand letter on 17/5/2016 and the Defendant's advocate responded on 25/5/2016 without mentioning that Professor Francis Doil Juma had died on 12/5/2016. Following this, the Plaintiff proceeded to file suit on 18/7/2016 against the Defendant as the court appointed manager and guardian of Professor Doil Juma. The Plaintiff contended that the Defendant's conduct was a demonstration of bad faith and ill will based on the fact that despite this, she proceeded to enter appearance and filed a defence.

The issue for determination is whether the Defendant is entitled to the costs for the withdrawn suit. The court has looked at the letter dated 25/5/2016 in response to the Plaintiff's advocate's letter of 17/5/2016. No mention was made of the death of Professor Juma in the letter. It is only in the letter dated 11/10/2016 that the Defendant's advocate informed the Plaintiff's advocate that there was no personal representative of the estate of Professor Juma while pointing out that the suit was fatally defective. That was after filing the defence on 8/9/2016.

Based on the conduct of the Defendant who did not inform the Plaintiff that Professor Juma had died before the Plaintiff filed this suit, the court declines to award the Defendant costs. Each party will bear its own costs for the withdrawn suit.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of February 2020**

**K.BOR**

**JUDGE**

**In the presence of:-**

Mr. B. Shimenga holding brief for Ms. F. Maina for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant