



IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 180 OF 2019 (OS)

IN THE MATTER OF THE LAND ACT, 2012

AND IN THE MATTER OF OFFICE GRID NOS. 60 & 61 AND PENTHOUSE NO. 60

ON THE 4TH FLOOR OF BUILDING ERECTED ON LR NO. 209/18869 – NAIROBI

AND IN THE MATTER OF AN APPLICATION BY A CHARGE TO ENTER INTO

AND TAKE POSSESSION OF A SECURITY PROPERTY

BETWEEN

GUARDIAN BANK LIMITED.....PLAINTIFF

AND

NANGWALE MWENYA MUNIAFU T/A MUNIAFU & COMPANY ADVOCATES....DEFENDANT

RULING NO. 2

Background

1. The plaintiff filed the originating summons dated 25th July 2019 against the defendant seeking, inter alia, leave to enter into and take possession of Office Grid No. 60 and 61 and Penthouse No. 60 on the 4th floor on the building erected on Nairobi LR No. 209/18869 (“suit property”).
2. Since the defendant did not oppose the suit by way of a replying affidavit, on 3rd February 2020, I granted the plaintiff leave to take possession of the suit property but stayed the order for a period of 45 days. The only issue left for determination is the award of costs.
3. The award of costs in civil proceedings is governed by **section 27** of the *Civil Procedure Act (Chapter 21 of the Laws of Kenya)* which states as follows:

27(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by who and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

4. The record is clear that the defendant did not oppose the suit but requested for time to make arrangements to settle the debt due to the plaintiff. It is because of the defendant's default that the plaintiff proceeded to file suit in order to exercise one of its statutory remedies. The plaintiff prosecuted the suit successfully. The defendant has not shown any reason why the court should depart from the general rule in **section 27** aforesaid that costs follow the event.

5. The defendant shall therefore bear the costs of the suit.

DATED and DELIVERED at NAIROBI this 15th day of JUNE 2020.

D. S. MAJANJA

JUDGE

Mr Mutua instructed by Mutua Waweru and Company Advocates for the plaintiff.