



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 60 of 2017

MICHAEL KIPCHUMBA.....APPELLANT

VERSUS

CHANNAN AGRICULTURAL CONTRACTORS.....RESPONDENT

RULING

Background

1. On 08th March, 2018, this court allowed the Appellant's appeal but the judgment was silent on costs.

Application

2. By a notice of motion amended on 01st July, 2019, brought under Sections 1A, 1B, 3A, 27 (1) and 34 of the Civil Procedure Act (*the Act*) and Article 159 of the Constitution, the Appellant/ Applicant pray for orders **THAT**:

i. The court be pleased to give directions on whether the Appellant is entitled to costs in the lower court

ii. Costs of this application be borne by the Respondent

3. The application is based on the grounds among others that the lower court has declined to tax the Appellant's costs in **WINAM SRMCC NO.166 OF 2016 MICHAEL KIPCHUMBA VERSUS CHANNAN AGRICULTURAL CONTRACTORS** on the ground that this court's judgment was silent on costs.

4. The application is also supported by an affidavit sworn on 01st July, 2019 by Maureen Akoth Okumu, advocate for the Applicant who reiterates the grounds on the face of the application.

5. The application is opposed on the basis of grounds of opposition filed on 22nd August, 2019 where it is asserted that the application is an abuse of the process.

Analysis and Determination

6. I have carefully considered the notice of motion *vis a vis* the supporting affidavit and the grounds of opposition.

7. Section 27 of the Act provides that:

(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 whom 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.

8. Section 27(1) of *the Act* gives courts the unfettered discretion to determine by whom costs are to be paid. It is trite that costs follow the event and a successful litigant ought to be fairly reimbursed for the costs that he has had to incur.

9. Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya gives this court inherent power to make such orders as may be necessary for the ends of justice to be met. Ends of justice cannot, in my humble view be met or seen to be met if the Applicant being the successful litigant is denied costs.

10. The upshot of the foregoing is that the notice of motion dated **08th March, 2018** is considered and allowed in the following terms:

i. The Respondent shall bear costs of the Appeal and of the lower court

ii. Each party shall meet its own costs of this application

DELIVERED AND SIGNED IN KISUMU THIS..26th..DAY OF...September...2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - **Amondi/Okodoi**

For Appellant/Applicant -N/A

For the Respondent - N/A