

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CIVIL APPEAL NO. 4 OF 2016

KENYA POWER & LIGHTING COMPANY LIMITED.....APPELLANT

-VRS-

DAVID OBARE OMWOYO t/a OMWOYO AUCTIONEERS..RESPONDENT/APPLICANT

RULING

Before me is the Notice of Motion dated 3rd May 2019 in which the respondent in this appeal seeks a review of the ruling rendered by this court on 21st February 2019. By the said ruling this court set aside a ruling of the lower court which had taxed the respondent's fees at KShs. 80,000/= and thereafter directed that the costs of the appeal would abide the judgement in the trial court. By the present Notice of Motion the respondent/applicant urges this court to order the appellant/respondent to bear the costs of the appeal having lost the case to the respondent/applicant by a judgement delivered on 4th July 2017.

The Notice of Motion was canvassed by way of written submissions. I have considered those submissions and the other material placed before me carefully. I agree with Counsel for the respondent/applicant that there is indeed an error apparent on the record which necessitates a review of the ruling of this court. It is clear from the ruling that at the time the appeal was canvassed the judgement of the lower court was not brought to my attention and this court acted on the mistaken belief that the case in the lower court was yet to be determined. Indeed, the impression given to this court by the parties in the appeal was that the judgement, giving rise to the charges that were the subject of the appeal, had been set aside. Had this court been aware of the judgement of the lower court it would not have made the order that the costs of the appeal would abide the judgement in the court below. As costs follow the event, this court would have awarded the costs of the appeal to the appellant being the successful party. It would be unjust to condemn a successful party to costs so I do not find merit in the respondent/applicant's application that the appellant should bear the costs of the appeal. Nevertheless, I do agree with his Advocate that there is need to review the ruling so as to bring this matter to a close. Accordingly, **the ruling rendered on 21st February 2019 be and is hereby reviewed so that the costs of the appeal are awarded to the appellant who is the respondent in this Notice of Motion.** The said costs may either be agreed or taxed by the Deputy Registrar of this court. The respondent/applicant shall also bear the costs of this application. It is so ordered.

Signed, dated and delivered in Nyamira this 28th day of November 2019.

E. N. MAINA

JUDGE