



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 1615 OF 2000**

**CYPERR ENTERPRISES LIMITED.....PLAINTIFF**

**VERSUS**

**NATIONAL BANK OF KENYA LIMITED.....DEFENDANT**

**RULING**

1. On 15<sup>th</sup> June 2015 the court dismissed the plaintiff's suit for want of prosecution.
2. The defendant has asked the court to set aside that order because it was made in error.
3. The court records show that as far back as 1<sup>st</sup> March 2010, the parties recorded a consent order, indicating that the matters in issue between them had been fully settled and compromised.
4. Thereafter, the defendant filed a Bill of Costs. Although the plaintiff raised an objection to the Bill of Costs, the court eventually directed that the said bill be taxed. It was on 11<sup>th</sup> July 2012 when Havelock J. gave the directions as to the taxation.
5. On 3<sup>rd</sup> December 2012 Hon. Dominica Nyambu, the learned Taxing Officer, delivered her Ruling on the taxation, awarding to the defendant costs assessed in the sum of Kshs. 2,966,471.76/-.
6. In the light of the fact that there was already a consent order, determining the case, and also because the costs had already been taxed, I find that the court erred when it dismissed the suit on 15<sup>th</sup> June 2015.
7. Therefore, I do hereby order that the orders made on 15<sup>th</sup> June 2015 be set aside forthwith.
8. In effect, the suit is hereby reinstated.
9. However, as the plaintiff did not bear any responsibility for the orders made on 15<sup>th</sup> June 2015, I hold the view that it would be unfair to condemn it to pay the costs of the application dated 10<sup>th</sup> November 2015.
10. Each party will, therefore, pay its own costs of the application.
11. Having now reinstated the suit, I direct that the defendant should serve **HON CYRUS JIRONGO** with summons, requiring him to attend court, for purposes of being examined orally, as to the assets of his company, **CYPERR ENTERPRISES LIMITED**. Hon. Jirongo is to be notified that he is deemed to be the principal director of the plaintiff, and that the defendant intends to ask the court to compel him to take personal responsibility for the costs payable by his company.
12. If Hon. Jirongo fails to attend court on the scheduled date or if he fails to show cause why he should not be held personally responsible for the costs, the court may proceed to make appropriate orders.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>th</sup> day of February 2016.**

**FRED A. OCHIENG**

**JUDGE**

**Ruling read in open court in the presence of:**

No appearance for the Plaintiff

Odhambo for the Defendant

Collins Odhambo – Court clerk.