

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 431 OF 2009

NESTLE KENYA LTD.....PLAINTIFF

VERSUS

KELVIN & HANNINGTON INTERNATIONAL LTD.....DEFENDANT

RULING

1. By a **Notice of Motion** application dated 13th October 2015 and filed herein on 16th November 2015 the Defendant applies to have the suit herein dismissed. The Plaintiff does not oppose the application for dismissal but submits that there should be no order on costs.

2. I have considered the submission on costs. It is clear that since the suit was filed in 2009 proceedings have taken place which involves costs to the Defendant, including this application. The old adage that in any suit, the costs follow the event cannot be avoided. I therefore allow the application by the Defendant dated 13th October 2015, and dismiss the suit herein with costs to the Defendant. The costs of this application shall also be for the Defendant.

Orders accordingly.

READ, DELIVERED AND DATED, AT NAIROBI THIS 19TH DAY OF FEBRUARY 2016.

E. K. O. OGOLA

JUDGE

Ruling Read in open court in the presence of:

Mr. Gitakan hb M/s Opio for Plaintiff

Mr. Musyoki for Defendant

Teresia Court Clerk