



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 362 OF 2010**

**NETWORK OF AIDS RESEARCH  
OF EASTERN & SOUTHERN AFRICA .....PLAINTIFF**

**V E R S U S**

**HON. LENNY KIVUTI  
(T/A GEOMAPS CENTRE).....DEFENDANT**

**RULING**

On 18<sup>th</sup> March 2015 this suit was by consent withdrawn. There was no consent regarding costs. Submissions were filed on the issue of costs. This ruling is on that issue only.

The events leading to withdrawal of the suit were as follows –

- i. The Plaintiff instituted suit by filing plaint and a chamber summons application for injunction which prayers were granted in the interim;
- ii. When the parties appeared in Court on 16<sup>th</sup> July 2010, they adopted a consent dated 15<sup>th</sup> July 2010 in which it was agreed that a bank guarantee of the disputed amount be filed. This was confirmed in the court mentions that followed.
- iii. It would seem after this, the Plaintiff lost interest in the matter as it is the Defendant who moved the court by Notice of Motion dated 9<sup>th</sup> September 2014, wherein it applied for dismissal of the suit for want of prosecution. Even before the application could be heard, the Plaintiff filed a notice of withdrawal of suit dated 20<sup>th</sup> February 2015.

When the application came up for hearing on 18<sup>th</sup> March 2015 the Applicant withdrew his suit as already mentioned.

Under **section 27(1)** of the **Civil Procedure Act, Cap 21**, costs are at the discretion of the court, subject to the proviso to that sub-section which reads –

**“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.”**

The event here was that the Plaintiff chose not to proceed with its suit and withdrew the same, no doubt informed by the adverse history of non-prosecution of the suit. The Defendant though he had not filed

defence, blames it on the Plaintiff who did not take out summons to enter appearance. According to the court record, the only document he filed in this suit was the Notice of Appointment of Advocates.

However, as far as costs of the suit are concerned, the “event” here is that the Plaintiff withdrew its suit. Though the Defendant did not file any substantial documentation in this suit, it was still represented by Counsel and there is no reason why costs of this suit should not follow withdrawal of the suit.

The Defendant shall have costs of the suit. Such costs shall be agreed and if not to be taxed by a taxing master.

Orders accordingly.

**Dated and delivered at Nairobi this 21<sup>st</sup> Day of May, 2015.**

**A.MBOGHOLI MSAGHA**

**JUDGE**