

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 541 OF 2005

TELKOM KENYA LIMITED.....APPELLANT

VERSUS

DAVID MURITHI KAIGURI.....RESPONDENT

Alias DAVID MURIITHI KAIGORI

RULING

1. David Murithi Kaiguri, alias David Muriithi Kaigori, the Respondent herein filed a suit before the Principal Magistrate's court, Kerugoya against Telkom Kenya Ltd, the Appellant herein where of he sought for a declaratory judgement to the effect that he had been employed by the Appellant on permanent terms. He also sought for payment of 240,587/30 as terminal dues. The suit was heard and on 14.7.2005 the Respondent was declared to have been employed by the Appellant on permanent terms. The Respondent was also awarded ksh.139,594/= as terminal dues.

The Appellant was dissatisfied hence he preferred this appeal

2. Hon. Mr. Justice Onyancha heard the appeal and on 18.5.2015, the honourable judge dismissed the appeal and reviewed upwards the award on terminal dues to kshs.243,838.30. There was no mention of costs.
3. Learned counsels appearing in this matter beseeched this court to make a decision on costs. Mr. Mwangi learned advocate for the Appellant argued that this court has no jurisdiction to entertain the application because it is tantamount to sitting on appeal in its own cause. He was of the view that the Respondent should be awarded costs being a successful party under Section 27 of the Civil Procedure Act. Mr. Abubakar did not address his mind to the question of jurisdiction.
4. There is no doubt that the parties had asked for costs both before the trial court and on appeal. It would also appear that Justice Onyancha did not consider at all the question of costs. Having not expressed himself over the issue, it cannot be argued that this court will be sitting on appeal when called upon to decide the issue. In my view I am entitled to infer that the issue on costs escaped the mind of the Honourable judge. Under Sections 99 and 100 of the Civil Procedure Act, the law envisaged such lapses or slips to occur hence it gave the court the discretion to step in and correct such errors.
5. Having come to the conclusion that I have jurisdiction to hear and determine the question on costs. Let me determine the question of costs on its merits. It is very clear that under Section 27 of the Civil Procedure Act that costs follows the event. There is no reason why the Respondent being the successful party, should not be given costs. I award the Respondent costs of the appeal.

Dated, Signed and delivered in open court this 13th day of November, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

.....for the Respondent