



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CIVIL APPEAL NO.33 OF 2009**

**WILLIAMSON TEA (K) LTD.....APPELLANT**

**VERSUS**

**RAYMOND KIPKEMOI.....RESPONDENT**

**RULING**

**Williamson Tea (K) Ltd**, the Appellant herein took out the Motion dated 17th March 2014 whereof it applied for the following orders:

1. **THAT this application be certified urgent and be heard ex parte in the 1st instance.**
2. **THAT there be a stay of recovery of costs and/or the release of the costs deposited herein pending the hearing and determination of this application.**
3. **THAT the court be pleased to set aside and/or review and/or vary the order made by the subordinate court as to costs in favour of the respondent.**
4. **THAT upon grant of prayer 2 above the court be pleased to vary and/or review its judgment to include and/or made an order for costs in favour of the appellant applicant being successful party in this appeal.**
5. **THAT this costs of this application be in the cause.**

The Motion was served upon the firm of M/s Meroka & Co.Advocates for **Raymond Kemboi Korir**, the Respondent herein, the same did not attract any response. When the same came up for *inter partes* hearing, the Respondent's advocate did not turn up in court despite notice hence the appellant's advocate was allowed to prosecute the Motion ex parte. It is the submission of the appellant that on 21st February 2012, Judgment on appeal was delivered in favour of the appellant. The appellant pointed out that there is an error apparent on record in that costs should have been given to the successful party but instead the court went silent. This court was beseeched to make an award of costs in favour of the appellant under **Section 27** of the **Civil Procedure Act**.

I have carefully perused the judgment on appeal delivered on 21st February 2012. The history of this matter started when Raymond Kipkemoi Arap Korir, the Respondent herein, filed a compensatory suit before Chief Magistrate's Court, Kericho claiming damages for the injuries he sustained while working for the Appellant. After hearing the suit, the trial court awarded the Respondent Kshs.130,000 as damages. The appellant being unhappy filed this appeal. On appeal, the aforesaid award was set aside. In his Judgment, Hon. Mr. Justice G.B.M Kariuki, as he then was, allowed the appeal with costs to the Respondent. The appellant is now before this court and has pointed out that since it was the successful party he should be given costs as opposed to the Respondent. That assertion has not been challenged by the Respondent. A careful perusal of **Section 27** of the **Civil Procedure Act** will reveal that costs follow the event unless for reasons to be recorded the court rules otherwise. The learned Judge awarded costs to the Respondent yet he lost the case. No reasons were assigned to that decision. I am inclined to infer that the learned Judge did not mean to award costs to a losing party. In my view and considering the circumstances of this appeal, the Judge inadvertently made an error. He merely slipped. The law envisaged such errors to occur in the daily life of a judge and that is why under **Section 99** of the **Civil Procedure Act**, the law allowed the court to correct the error by applying the slip rule. For this reason, I

find the Motion to be well founded. The order awarding costs to the Respondent is set aside and is substituted with an order awarding the Appellant costs.

**Dated, Signed and delivered in open court this 30th day of May 2014.**

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**J.K.SERGON**

**JUDGE**

**In open court in the presence of:**

N/A for Appellant

N/A for Respondent