



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**CIVIL APPEAL NO 13 OF 2014**

**(AN APPEAL FROM THE DECISION OF THE COMMISSIONER-GENERAL DATED 12<sup>TH</sup> NOVEMBER 2013)**

**SAMUEL MALLEL TANUI.....APPELLANT**

**VERSUS**

**COMMISSIONER-GENERAL.....RESPONDENT**

**R U L I N G**

1. The Appellant herein appealed against the decision of the Respondent conveyed by his letter dated 12<sup>th</sup> November 2013 by which he declined to review and rescind the decision of the **Commissioner, Investigation and Enforcement**, issued on 16<sup>th</sup> September 2013. The Appellant sought the following specific orders -

“(i) ...

(ii) That the Demand Notice dated 16<sup>th</sup> September, 2013 together with the entire decision of the Commissioner-General as communicated vide the letter of 12<sup>th</sup> November 2013, be...set aside.

(iii) That the Respondent be prohibited from collecting the sum of KShs 500,200/00...based on the impugned Demand Notice dated 16<sup>th</sup> September 2013.

(iv) That the Agency Notice issued to the Appellant’s bankers and employer herein, *Bank of Africa Kenya Limited* be declared null and void.

(v) That the Respondent be prohibited from issuing any other/further Agency Notice based on the impugned Demand Notice.

(vi) That the Appellant be granted the costs of this appeal.”

2. On 19<sup>th</sup> June 2014 a consent order was recorded by which the appeal was disposed of save for the issue of costs. That consent order was as follows –

**“ORDER:**

**BY CONSENT –**

- i. **This appeal be and is hereby allowed as prayed in prayers 1, 2, 3, 4 and 5 in the memorandum of appeal dated 21<sup>st</sup> and filed on 23<sup>rd</sup> January 2014.**
- ii. **There shall be no further demands or claims, monetary or otherwise, by the Respondent or its servants and agents, directed to the Appellant in regard to motor vehicle Registration No. KAK 508 Q, make *Toyota Land Cruiser Chassis No. KZJ 950061839 and Engine No. IKZ0472167.***
- iii. **The issue of costs to be determined by the court.”**

3. On 14<sup>th</sup> July 2014 the court heard arguments on the issue of costs. I have considered the submissions of the learned counsels appearing, including the cases cited.

5. Costs are at the discretion of the court. See **section 27(1) of the Civil Procedure Act, Cap 21 (the Act)**. But costs shall follow the event unless the court or judge shall for good reason otherwise order. See the **proviso** to the aforesaid subsection.

6. In the present case it is apparent that the Appellant succeeded fully in his appeal. The consent order allowed his appeal as prayed in prayers (i), (ii), (iii), (iv) and (v) of the memorandum of appeal. The **event** here therefore is that the Appellant succeeded in his appeal, albeit by consent. Costs must therefore follow that event.

7. I find no good cause to order otherwise. I will therefore award costs of the appeal to the Appellant. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 28<sup>th</sup> DAY OF JULY 2014**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JULY 2014**