



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPLICATION (JR) NO. 65 OF 2013**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO COMMENCE  
PROCEEDINGS IN THE NATURE OF JUDICIAL  
REVIEW**

**AND**

**IN THE MATTER OF: THE MAGISTRATE'S COURT ACT CAP. 10**

**AND**

**IN THE MATTER OF: MOMBASA CIVIL SUIT NO. 2801 OF 2011**

**AND**

**REPUBLIC .....APPLICANT**

**EX-PARTE**

**NICHOLAS KATUMO PETER**

**VERSUS**

**SENIOR PRINCIPAL MAGISTRATE, MOMBASA ..... 1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF TITLES MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ERICK AMANI MANDOSHA ..... 1<sup>ST</sup> INTERESTED PARTY**

**JACQUELINE MKUTIO MUTUNGA ..... 2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The ex parte applicant prays for costs of the application following the judgment of the court by consent of the parties for the grant of the judicial review orders sought in the Notice of Motion herein. The parties could not agree as to the order on costs and therefore set the matter for submissions of the issue of costs. The counsel for the respondents although present when the date was set for submissions did not attend court and the submissions on the issue proceeded in his absence.

2. Counsel for the ex parte applicant relied on the decision of the Court of Appeal in **Singh v. Qurbanlite Ltd** (1985) KLR 920 on the discretion of the court on costs. He prayed that the court follows the principle stipulated in section 27 of the Civil Procedure Act that costs shall follow the event unless the court directs otherwise urging that nothing had been shown to warrant the court adopting the proviso to the principle.
3. Section 27 (1) of the Civil Procedure Act is in terms as follows:

*“27. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:*

***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.”***

4. The court must consider that litigation as with other legal business is costly in terms of time, money, inconvenience and the opportunity cost while attending to the court matter, and a party who by conduct causes another to seek relief in court or who seeks court’s intervention upon grounds that the court ultimately dismisses as unmeritorious must be ready to meet the costs incurred by the other party in seeking the court’s intervention or in defending himself or protecting his interest in the subject matter. The successful party is entitled to the costs in accordance with the principle that costs follow the event. The law as set out in section 27 of the Civil Procedure Act requires good reasons for departing from the said principle. See **A.G. v. Theuri**, CACA NAI 51 of 1985, (1985) KLR 157.
5. The counsel for the respondent did not attend court to offer any such reasons for not following the general principle that costs should follow the event. The court is similarly not aware of any such reasons emerging from the pleadings and or affidavits. That the respondent conceded the applicant’s case resulting in the consent upon which the judgment of the court by consent of the parties was made is not a justification for not following the general principle on costs; it may only support a submission before the taxing officer of the court for the adoption of minimum stipulated figures on items of costs at the taxing of any Bill of Costs that may be filed in default of agreement on amount of the costs payable between the parties.
6. Accordingly, the court finds no reason to depart from the principle that costs shall follow the event in this case. The court, therefore, makes an order for the payment of costs by the respondent to the ex parte applicant of such costs of both the Chamber Summons for leave to file judicial review proceedings and the main Notice of Motion herein dated 22<sup>nd</sup> November 2013, to be agreed between the parties and in default to be taxed by the taxing officer of the court.

**Dated, signed and delivered this 18<sup>th</sup> day of July, 2014.**

**EDWARD M. MURIITHI**

**JUDGE**

In the presence of: -

No appearance for the Applicant

No appearance for the Respondents

No appearance for the 1<sup>st</sup> Interested Party

No appearance for the 2<sup>nd</sup> Interested Party

Ms Linda - Court Assistant