



REPUBLIC OF KENYA

High Court at Bungoma

Miscellaneous Civil Case 62 of 2011

SAUL WEKESA NYONGESA..... PLAINTIFF

VERSUS

**CHAIRMAN KANDUYI LAND DISPUTES TRIBUNAL
.....RESPONDENT**

CHARLES MUNGA KIPSANG INTERESTED PARTY

RULING

This is an application seeking review on costs awarded against the applicant.

In their application dated 5th October 2012 brought under Section 80 CPA and order 45 rule 1 and 2 of the CPR they have sought to have the orders of the judge awarding the respondent costs reviewed. They have relied on grounds on the face of the application and on the affidavit of Saul Wekesa Nyongesa.

Their basis for seeking review is *inter alia* isthat it's the respondent who referred the matter before the Kanduyi Land Disputes Tribunal and that the award and judgment of the court was declared as a nullity.

Their submissions is that the award on costs was erroneous.

The respondent has opposed the application by filing affidavit in reply. He averred that he had sought the dismissal of the application for judicial review with costs and he was awarded costs on the basis of the strength of his submissions. These were the words of the of the judge that are sought to be reviewed.

“Owing to the defects pointed out in the submissions by the interested party, I ask the 1st exparte applicant to pay costs of the motion.”

There were two exparte applicants in the motion. The judgment was specific as to which one should pay the costs. Further the judge awarded the costs to the respondent on the basis of the defects he pointed out in his submissions.

My interpretation is that the motion was sort of defective and the judge instead of opting to strike it out which would have been with costs to respondent disregarded the defects and dealt with the application on its merit. He was thus clear on his mind when he made specific orders for costs to be paid by the 1st exparte applicant.

The award of costs normally follow the event and it is at the discretion of the trial court when making such orders. I do not therefore agree with the applicant that there was an error made by the judge. In the case of Sikuku Stella Mason vs. Ben Kumbuti Wasilwa HC. Civ. Appeal no. 66 of 2000 at Bungoma quoted by the applicant is distinguishable from the present case because the issue of defects of the substantive motion did not arise The reasons for condemning the respondent to pay costs in that suit were thus varied. I will therefore not disturb the holding of the learned judge as there was no error apparent.

Since the applicant is already condemned to earlier costs, I dismiss this application with an order that each party bear their costs.

RULING DATED, SIGNED, READ AND DELIVERED in open court this 30th day of April 2013.

A. OMOLLO

JUDGE.