

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO 247 OF 2011

NIR-SHA PLASTICS MANUFACTURERS LTD..... PLAINTIFF

VERSUS

MAUREEN OGEMA ONDATTO.....DEFENDANT

R U L I N G

1. In this suit the Plaintiff pleaded that the Defendant was its periodic tenant in certain residential premises; that on 7th April 2011 the Plaintiff gave to the Defendant a 2-month notice to vacate the premises; and that the Defendant has failed or neglected to vacate the premises. The main relief sought in the plaint is an order of eviction.

2. The Defendant entered appearance and filed defence. She denied receiving any notice to terminate her tenancy; that in any event the pleaded notice to terminate was defective, malicious and distorted; and that there were no lawful grounds to terminate her tenancy. She did not deny that she was a periodic tenant.

3. The Plaintiff subsequently filed notice of motion dated 29th August 2011 seeking summary judgment under **Order 36, rules 1 and 2** of the **Civil Procedure Rules** (the **Rules**). The Defendant opposed the application by grounds of opposition dated 2nd December 2011.

4. When the application came up for hearing on 24th March 2012 the Plaintiff's learned counsel informed the Court that the suit had been overtaken by the event of the Defendant having vacated the suit premises. Upon his application the suit was marked as withdrawn. The issue of costs would be canvassed subsequently.

5. That issue was canvassed on 3rd July 2012. There was no appearance for the Defendant despite the date having been given in court in the presence of her learned counsel.

6. I have considered the submission of the Plaintiff's learned counsel. Costs are at the discretion of the court; but they must follow the event unless for good reason the Court orders otherwise. See **section 27(1)** of the **Civil Procedure Act, Cap 21**.

7. The event here is that the Defendant conceded the Plaintiff's suit by vacating the suit premises. At any rate she has not offered any other explanation for vacating. In the circumstances the Plaintiff is entitled to costs, and I find no good reason to deny it costs.

8. I will award costs of the suit to the Plaintiff. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 26th DAY OF NOVEMBER 2013

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 29TH DAY OF NOVEMBER 2013