



**REPUBLIC OF KENYA**

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

**CIVIL SUIT 318 OF 2010**

**FINA BANK LIMITED.....PLAINTIFF**

**VERSUS**

**FRANCIS GITAU KOMU T/A BOMAS MOTOR MART.....DEFENDANT**

**R U L I N G**

On 27<sup>th</sup> March 2012, after hearing the Notice of Motion filed by the plaintiff herein dated 13<sup>th</sup> October 2011 by which the plaintiff was seeking an order that the Defendant's statement of defence be struck out and judgement be entered for the plaintiff as prayed for in the plaint, I made the following findings:

**In the result, I find merit in the application dated 13<sup>th</sup> October 2011 and the same is allowed by entry of judgement in the sum of Kshs. 4,319,691.22. As there was no evidence in support of the rate of interest at 22% I award interest at Court rates from the date of filing suit till payment in full. The plaintiff will also have the costs of the application.**

The plaintiff by its letter dated 2<sup>nd</sup> April 2012 has moved the Court for directions under section 27 of the Civil Procedure Act for provision for costs.

It is clear from the judgement that the application dated 13<sup>th</sup> October 2011 was allowed. That application was seeking entry of judgement as prayed in the plaint which plaint also sought for costs. Although it does not come out clearly from the ruling, costs do follow the event and there is no reason why the plaintiff's should have been deprived of the costs. Accordingly the omission to expressly award costs to the plaintiff was as a result of accidental slip or error which is curable under section 99 of the Civil Procedure Act.

Accordingly the costs of this suit are awarded to the plaintiff.

**Ruling read, signed and delivered in court this 19<sup>th</sup> day of September 2012.**

**G.V. ODUNGA  
JUDGE**

**In the presence of:**

Mr Kivuva for Mutua for Plaintiff

No appearance for Defendant