



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION – NAIROBI

CIVIL SUIT NO. 480 OF 2006

TELKOM KENYA LIMITED

.....
PLAINTIFF

VERSUS

STATS INVESTMENTS LIMITED

..... **DEFENDANT**

RULING

By a Notice to Show Cause dated 16th April, 2010, the Deputy Registrar called upon the respective Counsel for the parties herein to show cause why this suit should not be dismissed under **Order XVI Rule 2(1)** of the **Civil Procedure Rules**. The Notice was based on the ground that no application had been made or step taken in the suit by either party for one year.

Mr. Elias Masika, learned Counsel for the Plaintiff, filed a replying affidavit which he personally swore on 16th June, 2010. In that affidavit, he deposed that by letters dated 14th December, 2006 and 24th July, 2008 respectively, he sought to find out from his clients the position regarding the matter and was informed that the dispute had been amicably settled between the parties.

When the matter came for the hearing of the Notice to Show Cause Ms. Karumba for the Defendant pressed strongly for costs, which Mr. Masika for the Plaintiff strenuously contested. Since each party was satisfied with the settlement, the only outstanding issue was whether the Defendant should be awarded the costs of the suit. **Order XVI Rule 2(1)** of the **Civil Procedure Rules** states as follows –

“In any suit in which no application has been made or step taken by either party for one year, the Court may give notice in writing to the parties to Show Cause why the suit should not be dismissed and if cause is not shown to its satisfaction, may dismiss the suit.”

It is notable that under this **Rule**, a suit is liable to be dismissed where no application has been made or step taken by either party for one year. In the instant matter, none of the parties made any application or took any step for more than one year. *Prima facie*, therefore, both sides were culpable. However, we should not lose sight of the fact that the suit was not dismissed. Instead, it was

settled by the parties themselves without reference to their respective Advocates. In such circumstances, that it would not be proper to award any costs to either party. Such an award would only operate to soil the spirit in which the parties themselves settled the matter without raising any dust about costs.

I therefore decline to award any costs to any side, and instead direct that this suit be and is hereby marked as settled without any order as to costs.

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this 7th day of October, 2010.

L. NJAGI
JUDGE