

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI

Civil Suit 67 of

2009

**CENTRO DI RICERCA PROGETTO SAN
MARCO OF THE UNIVERSITY OF
ROME.....PLAINTIFF**

V

ITALIAN SPACE AGENCYDEFENDANT

RULING

Centro Di Ricerca Progetto San Marco of the University of Rome (herein referred to as the plaintiff) has filed this suit against Italian Space Agency (the defendant) seeking orders restraining the defendant by itself, its servants and/or agents from using and continuing to use the plaintiff's boat or vessel known as CRA2.

The defendants filed defence challenging the prayers insisting it was the manager and controlling authority of the boat and seeking that the suit be dismissed with costs.

By the time this matter came up for hearing the subject vessel had been released to the plaintiff in 2007, after the plaintiff had already filed suit. So now the plaintiff has complete control of the vessel as stated by PW1 (Rafaele Virmo Lamberti) but plaintiff seeks costs of the suit saying they were compelled by the situation then prevailing, to come to court to ask defendant to release the boat.

The defence counsel did not offer any evidence nor make submissions as to why the plaintiff should not be entitled to costs, all he said is "we've never agreed on costs" Section 27 of the Civil Procedure Act deals with the question of costs to the effect that costs in any action, cause or other matter shall follow the event unless the judge for some good reason orders otherwise.

Here the cause of action was necessitated by the defendant's recalcitrance is indicated by the facts stated in the statement of defence. Once the matter was in court, the defendant decided to release the boat to plaintiff – I do not have the background of what led to this release and I can only infer that defendant reawakened to the fact that the plaintiff was entitled to the boat, all along – which translates into meaning that if the matter had proceeded to hearing, invariably the plaintiff would have got the very orders sought in the plaint.

As a consequence then the event has been satisfied and under the circumstances it is the defendant who must bear the costs of this suit and I so order.

Delivered and dated this 9th day of **June 2009** at Malindi.

H. A. OMONDI

JUDGE

Mr. Kariuki for plaintiff

Mr. Matini holding brief for Waweru for defendant