



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Miscellaneous Civil Application 72 of 2005**

**SALIMA HIRSI..... PLAINTIFF**

**V E R S U S**

**KINOTI IMANYARA.....1<sup>ST</sup> DEFENDANT**

**ANTONY MURITHI MURIUNGI.....2<sup>ND</sup> DEFENDANT**

**SAMUEL THIRATA.....3<sup>RD</sup> DEFENDANT**

**CIVIL PROCEDURE PRACTICE**

- **Costs – costs follow the event – unless the court orders otherwise for reasons to be recorded 27 Civil Procedure Act, Cap 21 Laws of Kenya.**

**R U L I N G**

This Ruling concerns an application dated 7.03.2009 under the provisions of Section 27 of the Civil Procedure Act, (but presumably brought under the provisions of Order L rule 1 of the Civil Procedure Rules. It seeks clarification as to whether or not there was an order for payment of costs by the first Defendant to the 3<sup>rd</sup> Defendant.

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants opposed the application on the grounds –

- (a) that the court is **functus officio** and cannot entertain the application and grant the orders sought,
- (b) that the award of costs is discretionary and there is nothing to warrant the court re-exercise its discretion,
- (c) that the application is untenable in law and it ought to be dismissed with no order as to costs.

Commencing with the objections by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, to say that the court is **functus officio** means that the court having exercised its authority its commission had terminated or had been accomplished. This is of course correct in respect of the judgment of the court. The court cannot write another judgment for that would amount to the court sitting on appeal on its own decision. So what does the court do where it is confronted with an application for clarification of its own judgment? Does the judge say like Pilate of old **quid scripsi, scripsi** what I have written I have written? Yes the court can say that and more. It may rebuke those, the applicants and opponents who obtusely refuse, on the pretext that

the judgment was unclear in which event they should go to appeal or as they have done go to the same court and seek clarification or interpretation of that part of the judgment which they adjudge unclear vague or incomprehensible.

In this matter judgment was delivered on 6<sup>th</sup> June 2008. The court found as a fact at p. 7- 8 of the said judgment that the 3<sup>rd</sup> Defendant had sold and handed over documents of ownership to the 1<sup>st</sup> Defendant who had failed to lodge them forthwith Registrar of Motor Vehicle for the purposes of registration in his own name. After exonerating the 3<sup>rd</sup> defendant from liability for the plaintiff's claim and costs the judgment said-

**“If the 3<sup>rd</sup> Defendant has any claim in costs he would only pursue the 1<sup>st</sup> Defendant who has by failure to have the vehicle registered in his own name, brought this claim by the plaintiff against the 3<sup>rd</sup> Defendant.”**

Now **“good people”** as Kwendo Opanga would say in his column in the Sunday Nation or I would say **“good counsel”** pray ye what does that mean? Which is easier to say **“thy sins are forgiven thee, or stretch thy hand”** as both statements clearly mean whatever your ailment is, your ailment is healed. So is it different to say the 1<sup>st</sup> Defendant shall be liable for the 3<sup>rd</sup> Defendant's costs or, **“if the 3<sup>rd</sup> Defendant has any claim in costs he would only pursue the 1<sup>st</sup> Defendant who has by failure to have the vehicle registered in his name brought this claim against the 3<sup>rd</sup> Defendant?”**

That finding has only one meaning the 3<sup>rd</sup> Defendant is to recover his costs from the 1<sup>st</sup> Defendant. It has a premise, syllogism and conclusion. It conforms to and with section 27 of the Civil Procedure Act (Cap 21 Laws of Kenya), costs follow the event unless the court for reasons to be recorded orders otherwise.

There should be no filibustering, in a manner of speech, in litigation the Deputy Registrar should tax the 3<sup>rd</sup> Defendant's Bill of Costs as per the Judgment that the 1<sup>st</sup> Defendant is liable in costs to the 3<sup>rd</sup> Defendant.

That is, and was the order of the court.

Dated, signed and delivered at Meru this 31<sup>st</sup> day of July 2009

**M. J. ANYARA EMUKULE**

**JUDGE.**