

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 378 of 2006

MOSES KARIUKI NJENGA..... PLAINTIFF

VERSUS

**KENSINGTON DEVELOPERS LTD.....
.....DEFENDANT**

RULING

Notice of Motion brought under Order XXIV Rule 6 (1). Where it is proved to the satisfaction of the court, and the court after hearing the parties directs that a suit has been adjusted wholly or in part by any lawful agreement or compromise or where the Defendant satisfies the plaintiff in respect of the whole or any part of subject matter of the suit the court shall on application of any party, order that such agreement compromise or satisfaction be recorded and enter judgment in accordance therewith.

The Applicant/Defendant seeks orders that his suit be marked settled or compromised by agreement of parties. Application is supported by affidavit of Applicant with annexures FH 1 dated 06.06.07 and 10.06.07.

The Plaintiff/Respondent has filed a Replying Affidavit in which he admits signing the annexure aforesaid and agreeing to withdraw the suit and asks for costs.

The Plaintiff has filed submissions where he says he does not object to suit being marked settled but the costs should be paid to him.

The Defendant's submissions saying that this application was necessitated by the Plaintiffs neglected to file notice of withdrawal of suit in reasonable time after settlement was reached.

The Court has perused the application with Supporting Affidavit and also Respondents Replying Affidavit. Also the submissions filed by both parties. It is clear that the suit was settled and this matter is not disputed by parties. I therefore mark the suit as wholly settled.

On the issue of costs, both parties have benefited from the settlement. The Plaintiff has taken possession of his property and the Defendant has been discharged from any further liability on the constructions.

It is my view that each party should bear its own costs except that the costs of this application shall be paid by Respondent to the Applicant

It is so ordered.

DATED this 27th day of November, 2008.

JOYCE N. KHAMINWA

JUDGE