



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

**Civil Appeal 56 of 2003**

**HELDA ANEYA ODUOL.....APPELLANT**

**VS**

**AGNETA OOKO.....RESPONDENT**

**RULING**

The applicant in this application appears to be Roselyne Aburili Advocate. She has filed the application under Section 80 of the Civil Procedure Act, O.XLIV Rules 1, 2, 3(2), 4 of the Civil Procedure Rules and Order L Rule 1 of the Civil Procedure Rules. She is asking the court to review the order on costs made on 3-2-2006 and award the costs of the appeal to the appellant in Civil Appeal No.56/2003 who is her client. She has premised the application on the grounds on the face of the application and on her own affidavit dated 28-2-2006.

Her main contention is that the appeal was allowed in favour of the appellant and since there is no other cause pending, she is not able to claim costs. She contends that the order that “*costs be in the cause*” was a slip of the pen which this court has jurisdiction to review under the Slip Rule.

The application is opposed by counsel for the Respondent vide the 6 grounds of opposition dated 20.10.2006. I have carefully considered the application in question along with the said grounds and affidavit vis a vis the grounds of opposition. The matter is, in my view very straight forward indeed. Once a matter is concluded on appeal, there is no cause left on record in which costs can be claimed. The order that “*costs be in the cause*” must therefore have been a slip by the Honourable Judge. In my considered view, this is an error apparent on the face of the record which I have jurisdiction to amend/review.

I have looked at the pleadings before the Provincial Land Appeals Tribunal along with paragraph 4 of the grounds of opposition. These show that it is the applicant who had taken the Respondent to the tribunal which ruled against her. This must have crossed the mind of my brother Judge when he made his ruling. Had he wanted to give the appellant costs, he could have succinctly said so in his judgment. It appears to me that he did not wish to give costs to either party and hence the slip that costs be in the cause. After considering the issues and submissions before me, I agree that there is an error on the face of the record which needs to be rectified.

Accordingly, I allow the application dated 28.2.2006 and review the order that “*costs be in the cause*” and replace it with an order that “*each party bears its own costs.*” That is the order that appeals to my sense of justice in the circumstances and also the order which I believe my brother Judge meant to make. Each party to also bear the costs of this application.

W. KARANJA

JUDGE

Delivered and dated at Bungoma this 7<sup>th</sup> day of February, 2007 in open court in presence of both counsels.

W. KARANJA

JUDGE

7/2/2007