

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 3781 of 1993

KENYA INDUSTRIAL ESTATES.....PLAINTIFF

VERSUS

KIANJATA FURNIURE INDUSTRIES LTD.....1ST DEFENDANT

PETERSON WAIGURU KARIUKI..... 2ND DEFENDANT

GEORGE MUIGA KARIUKI.....3RD DEFENDANT

**EPHANTUS MAINA KARIUKI..... 4TH
DEFENDANT**

RULING

This is an application by Maingi Maina Kariuki and Muigi Maina Kariuki under Sections 3A and 27 of the Civil Procedure Act and Order L Rule 1 of the Civil Procedure Rules for an order that the Applicants be granted costs of the suit against the Plaintiff. The Applicants say that the suit against them was on 22nd April 2005 terminated after the Amended Plaintiff was struck out but they were not granted the costs of the suit. In support of the application Wachira their Advocate for the Applicants has sworn an affidavit giving grounds for the application.

The suit was filed by the Plaintiff on 2nd August 1993 and the Applicants were not named as the Defendants. On 23rd April 1996 the Plaintiff filed an Amended Plaintiff without leave of the court and in the Amended Plaintiff substituted two of the Defendants, one Peterson Waiguru Kariuki and George Muiga Kariuki with the Applicants Maingi Maina Kariuki and Migwi Maina Kariuki as the new Defendants. The applicants on 23rd November 1996 filed an application challenging the Amended Plaintiff through which they were introduced into this matter.

The said application was granted and the Amended Plaintiff ordered struck out on 22nd April 2005. As a consequence of the said striking out of the Amended Plaintiff the suits against the Applicants were terminated but costs were not granted as the same had not been prayed for. The Plaintiff was served but did not file any papers to oppose the application.

Mr. Nganga for the Applicants submitted that costs follow the suit and since the applicants were not granted costs after the suit against them was dismissed, it is only fair and just to grant the Applicant's costs as they had engaged advocates to act for them and filed defences hence had incurred expenses.

Having considered the application in light of the supporting affidavit, the grounds and submission by counsel, I am satisfied that this is a suitable case in which to exercise my discretion in favour of the Applicants.

Accordingly I allow the application in terms of Prayer 1 and 2 of the Notice of Motion dated 17th November 2007. The Applicants are granted the costs of the suit as well as the costs of this application.

The costs of the suit so granted to be assessed by the taxing master.

Dated and delivered at Nairobi this 25th day of September `2007.

J.L.A. OSIEMO

JUDGE