



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 862 of 2004**

**ALBERT KIRUTHI MUKABI (T/a PIPELINE HARDWARE)...PLAINTIFF**

**V E R S U S**

**CITY COUNCIL OF NAIROBI .....DEFENDANT**

**R U L I N G**

It is conceded by the Plaintiff's learned counsel that this suit can no longer be maintained. This is because of the expiry of the Plaintiff's trading licence on or about the 31<sup>st</sup> December, 2004 upon which the suit was based. The licence was issued by the Defendant. With the expiry of the licence, the suit has been overtaken by that event and become spent. The suit is therefore liable to be struck out.

The only issue in dispute is what order for costs should be made. The Plaintiff says that it is not his fault that the suit has now become spent. When he filed it, the cause of action was very much alive, and the court felt confident enough to grant temporary orders of injunction upon the suit. In his view therefore, each party should bear its own costs of the suit. The Defendant on the other hand says that costs follow the event; therefore it should be awarded costs of this suit.

I have considered the submissions of the learned counsels. Under section 27 (1) of the Civil procedure Act, Cap. 21, costs are entirely at the discretion of the court. However, under the proviso to that subsection, costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall, for good reason, otherwise order. I hold that there is good reason here to order otherwise. When the Plaintiff filed his suit on 6<sup>th</sup> August, 2004 the cause of action was alive. It was not a frivolous suit, and he was able to get temporary relief. Given the heavy workload in our courts, it was unlikely that the suit could be heard and disposed of by 31<sup>st</sup> December, 2004 when the substratum thereof, that is the Plaintiff's trading licence, was due to expire. It is thus not the Plaintiff's fault at all that his licence expired before his suit could be heard and determined. It would therefore not be just that the Defendant, who has not even filed defence, should benefit from this fact. I will therefore allow in part the application by chamber summons dated 5<sup>th</sup> March, 2007 and order as follows:-

1. This suit be and is hereby struck out.
2. Each party to bear its own costs of the suit.

**DATED AT NAIROBI THIS 17<sup>TH</sup> DAY OF DECEMBER, 2007**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 20<sup>TH</sup> DAY OF DECEMBER, 2007**