



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

**Civil Suit 118 of 2004 (OS)**

**ARMADILO EQUITY LIMITED.....PLAINTIFF**

**VERSUS**

**INSTITUTE OF CORRESPONDENCE STUDIES (K) LIMITED.....DEFENDANT**

**RULING**

The Plaintiff filed this action seeking orders of the court for the court to direct the Defendant to execute a lease document pertaining to the lease agreement in respect of office space on LR NO.209/52 Oshwal House Nairobi. In the alternative the Plaintiff sought that the lease be executed by the Registrar of the High Court. The Defendant by a letter dated 28<sup>th</sup> March, 2001 were offered a lease in an office on the aforesaid property and subsequently the lease documents were prepared and forwarded to the Defendant tenant for execution. The Defendant tenant from the time the lease was forwarded to them failed to execute the lease. The Defendants despite the insistence of the Plaintiff property agent, refused to execute the lease without giving any bona fide reason. This led to the Plaintiff filing this present action. When this matter came before court on 25<sup>th</sup> October, 2006 the Plaintiff's counsel informed the court that prayer 1 and 2 of the Originating summons had been spent because the Defendants had executed the lease documents. The Plaintiff however, stated that the only issue outstanding for determination was the issue of costs. Plaintiffs counsel submitted that an order for costs should be made against the defendants because it was due to their default in execution of the lease that led to the institution of this suit. That the Defendants executed the lease two years after it was forwarded to them.

The issue of costs is that the sole discretion of the court but ordinarily costs follow the events. Section 27 of the Civil Procedure Act provides as follows:-

**“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:**

**Provided that the 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”.**

The court finds no reason why costs herein should not follow the event. The event here is that the Defendant has now executed the lease in accordance with the prayer in the Originating Summons. Having done so costs will therefore be borne by the Defendant whose action led to the institution of this suit. The court therefore, orders that the Defendant will bear the costs of this action whose costs are awarded to the Plaintiff. Orders accordingly.

**MARY KASANGO**

**JUDGE**

Dated and delivered this 13<sup>th</sup> November, 2006.

**MARY KASANGO**

**JUDGE**