

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE NO. 340 OF 2012

BEN OTIENO OWAGA.....1ST PLAINTIFF

NOEL SHEUNDA NYONGESA.....2ND PLAINTIFF

BEN OTIENO OWAGA AND

NOEL SHEUNDA NYONGESA

(Suing as administrators *ad litem*

The estate of MICHELLE AITTAH OWAGA

(Deceased).....3RD PLAINTIFF

VERSUS

ELIAKIM OWALLA.....1ST DEFENDANT

KAPKWATA SAW MILLS LTD.....2ND DEFENDANT

RULING

1. Judgment in this case was delivered on the 12th October 2017 on my behalf by the Hon. R. Korir J.

By a Notice of Motion dated 18th July 2018 by the plaintiffs under order 45 Rule 1 and Order 52 rule 1 Civil Procedure Rules, the applicant seeks a Review of the judgment and decree and determine the plaintiffs prayer for costs which issue is silent in the judgment though pleaded in the plaint.

2. It is evident on the judgment that no order on costs was made on the judgment.

Under **Section 27(1)** of the Civil Procedure Act costs ordinarily follow the event unless the court shall, for good reason or otherwise decline to order such costs. A successful party too is entitled to costs of a suit unless there are reasons to be recorded for a denial of the costs.

3. The omission to award costs to the plaintiff must have been an oversight, a mistake or omission on my part. That may be corrected on own motion or upon application – **Section 99 CPA** or under **Order 45 Rule I(b) CPR**. The court is empowered to review its orders/judgment on account of some mistake or error apparent on the face of the record.

4. Having rendered that I was, by a non-deliberate and unintentional omission to determine the matter of costs, and the issue having been brought to my attention by the application, I allow the said application dated 18th July 2018 and make an order that costs of the suit upon the judgment delivered on the 12th October 2017 shall be paid to the plaintiffs as joint administrators of the estate of the deceased by the Defendants jointly and severally with interest at court rates from the date of the judgment.

Dated, signed and delivered this 14th Day of February 2019.

J.N. MULWA

JUDGE