



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

MERU ELC CASE NO. 01 OF 2008

JAMES KIRONGO ITUMA RWITO.....PLAINTIFF

VERSUS

MARY KINGORI.....1ST DEFENDANT

NATIONAL BANK OF KENYA.....2ND DEFENDANT

INTERNET DATA SERVICES LIMITED.....3RD DEFENDANT

RULING

1. This application is dated 25th February, 2020 and seeks the following orders:

1. That this honourable court be pleased to certify this application urgent and proceed to make and/or issue appropriate direction for its disposal.
2. That this honourable court be pleased to review and/or vary paragraph 57 (4) of its judgment made and delivered on 10th February, 2020 in respect to the 2nd defendant/applicant and particularly the order requiring the defendants to pay half costs to the plaintiff plus interest at court rates.
3. That this honourable court be pleased to award to the 2nd defendant/applicant costs of the suit as against the plaintiff for being successful in its defence of the plaintiff/respondent claim against it.
4. That the costs of this application be provided for.

2. The application is supported by the affidavit of Samuel Mundia sworn on 25th February, 2020 and has the following grounds:-

- a. That there is an error apparent and/or an accidental slip by the court in the order made under paragraph 57 (4) of its judgment on the issue of costs payable to the plaintiff/respondent.
- b. The order made by the court on payment of costs as per paragraph 57 (4) of the judgment is inconsistent with the findings of the court as stated in paragraph 57 (1) in which the plaintiff/respondent's suit against the 2nd and 3rd defendants was dismissed yet in paragraph 57 (4) the court ordered that the defendants pay half costs to the plaintiff/respondent.
- c. The established legal position on payment of costs is that costs, though at the discretion of the court, will always follow the event unless in exceptional circumstances and for specific reasons to be stated by the court.
- d. There is an error apparent and/or an accidental slip in the order made by the court on the issue of costs as a party whose suit has been dismissed against a defendant in the suit cannot then be entitled to costs of the dismissed suit against the successful defendant.
- e. There is therefore need for the said order to be reviewed and/or varied so as to align and conform itself to the findings of the court and to conform to the law in regard to costs of the suit.
- f. This application is made in utmost good faith and has been brought to court without undue delay.

g. The nature of facts and circumstances of the case herein are in favour of granting of the prayers being sought for vide this application.

3. Having perused the application and the accompanying pleadings, I issue the following orders:

a. The application is to be heard by the Hon. Lady Justice Lucy Mbugua, ELC Judge, at Meru on 25th March, 2020.

b. Costs shall be in the cause.

4. Orders accordingly.

Delivered in open Court at Chuka this 12th day of March, 2020 in the presence of:

CA: Ndegwa

Parties not present

P. M. NJOROGE,

JUDGE.