



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 312 OF 2013

DANIEL KAMAU KARERA.....PLAINTIFF

=VERSUS=

CATHERINE WANGARI NYAGAH.....DEFENDANT

RULING

1. This is the Notice of Motion dated 25th April 2019 brought under section 27 and 99 of the Civil Procedure act.

2. It seeks orders:-

1. That the judgment delivered on 28th March 2019 by Lady Justice L. Komingoi be amended to include the issue of costs on the counterclaim that was dismissed

3. The application is supported by the affidavit of Kabaru Ndegwa, advocate for the plaintiff/applicant sworn on the 25th April 2019.

4. The application is opposed. There is a replying affidavit sworn by Gachoka Mwangi, Advocate for the defendant/respondent sworn on the 29th April 2020.

5. On the 22nd January 2020, counsel informed the court they did not intend to submit but were relying on the affidavits filed.

6. I have considered the notice of motion and the affidavit in support. I have also considered on the replying affidavit. The issue for determination is whether this application is merited. I have gone through the court record and find that the plaintiff did not file a reply to defence and defence to the counterclaim. The plaintiff therefore did not incur any costs. I agree with counsel for the defendant that none of the parties alluded to the counterclaim during the hearing. The plaintiff has not demonstrated that he incurred any costs in respect of the counterclaim. Costs are allowed at the discretion of the court. I find no merit in this application and the same is dismissed. Each party do bear own costs.

It is so ordered.

Dated, signed and delivered in Nairobi on this 21ST day of MAY 2020.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Kabaru Ndegwa for the Plaintiff

No appearance for the Defendant

