



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
MISC APPLICATION CASE NO. 36 OF 2013

JULIUS NYAROTHO APPLICANT

VERSUS

1. ATTORNEY GENERAL

2. MINISTER FOR AGRICULTURE

3. NZOIA SUGAR CO. LTD.

4. LAWRENCE SIMIYU SIFUNA RESPONDENTS

RULING

1. The application before court is dated the 19th of November, 2013 filed by the exparte applicant **Julius Nyarotho** against the respondents being the **Attorney General** and **Nzoia Sugar Company Limited** seeking for directions as to who ought to bear the costs of the suit and what proportions if to be shared following a judgment that was delivered in favour of the applicant.

2. In arriving at a decision it is important to consider the facts of the case that led to the judgement in favour of the ex- party applicant.

3. The exparte applicant had been appointed as the chairman of the Nzoia Sugar Company Limited for a period of 3 years vide a gazette notice No.5555 dated 21st May, 2010 and the said appointment ostensibly revoked retrospectively by the appointment of the 4th respondent vide gazette notice No. 8003 dated 8th July, 2011. The exparte applicant's case was that the appointment of the 4th respondent was in violation of the law; the revocation did not follow due process and offended the rules of natural justice and that indeed no reasons were given for the alleged revocation.

4. The court in it's judgment found that there had been no revocation of the exparte applicant's appointment as required by law, as it was not legally possible for another appointment to have been made; that appointment of the 4th respondent was in total violation of the law and the said appointment was quashed.

5. In delivering its judgment the court did not provide for costs necessitating the application before me.

6. From the foregoing the exparte applicant was successful in his quest to retain his sit as chairman of the third respondent. Unless a court otherwise gives reasons ordinarily costs follow the event.

In **Devrani Daltani Vs. Donde [1949] 16 EACA** it was held that a successful litigant can only be deprived

of his costs where his conduct has led to litigation, which may have averted. In *Med Bank Swaziland Ltd. Vs. Sandile Dlamini No. [144]2010 (2013) SZHC30 [2013]* the court referred to the holding of Murray C J in the case of *Levben Products Vs. Alexander Films (SA) (PY) Ltd 1957 (4) SA225 (SR) at 227* who stated as follows;

“It is clear from authorities that the fundamental principle underlying the award of costs is two-folds. In the first place the award of costs is a matter in which the trial judge is given discretion [Fripp vs. Gibbon & co, 1913 Ad D 354]. But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”

7. As stated earlier the applicant was successful in his cause. No reason from the proceedings and judgment would point towards a direction that would disentitle him from costs which as seen from the authorities stated above ought ordinarily to go to a successful litigant.

8. Arising from the above therefore I do award costs of the suit to the exparte applicant.

DATED and delivered at BUNGOMA this 3rd day of November 2016

ALI-ARONI

JUDGE.