



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 1061 OF 2005

AGRICULTURE SYNDICATE LIMITED..... PLAINTIFF

VERSUS

PRIMAROSA FLOWERS LTD.....1ST DEFENDANT

N. N. NJOROGE.....2ND DEFENDANT

KENYA MEAT COMMISSION.....3RD DEFENDANT

RULING

The ruling herein is on two Notices of Motion filed by the 2nd and 3rd Defendants and dated 21st March 2013 and 14th October 2103. Both the 2nd and 3rd Defendants are seeking orders that they be granted the costs of this suit. The 2nd Defendant in a supporting affidavit sworn on 22nd April 2013 by its Advocate, Robert Paul Onyango, stated that the Plaintiff's suit was dismissed on 11th November, 2010 by Mboghli Msagha J. at the instance of the 1st Defendant's application dated 25th May, 2010 for want of prosecution. Further, that prior to the filing of the 1st Defendant's application, the 2nd Defendant had also filed a Notice of Motion dated 25th February, 2010 seeking the same orders.

Further, that the Plaintiff thereupon filed a Replying Affidavit sworn on 24th of June 2010 by its advocate, Kibe Mungai, in response to the 1st and 2nd Defendant's applications, and that the 2nd Defendant participated actively by supporting the 1st Defendant's application. The 2nd Defendant stated that it participation was by way of submissions in support of the 1st Defendant's application filed on 8th September, 2010 that led to the dismissal of this suit. The 2nd Defendant avers that it not therefore in dispute that he is entitled to the costs of his application dated 25th February 2010.

The 2nd Defendant also contended that he had filed a Statement of Defence 26th September 2005 in response to the Plaintiff's claim dated, and that by the grant of an Order dismissing the suit by this Court on 11th November, 2010 he had thereby succeeded against the Plaintiff and is rightfully entitled to costs incurred by him in his Defence. The 2nd Defendant stated that he will suffer great prejudice and loss if this application is disallowed as he has incurred huge expenses to get legal representation in his Defence against the Plaintiff. The 2nd Defendant annexed copies of his application dated 25th February 2010, his submissions in support of the 1st Defendant's application and his Defence.

Similar arguments were made by the 3rd Defendant's Advocate, Mark Ndumia Ndung'u in a supporting affidavit he swore on 14th October 2013. He stated that the 3rd Defendant participated actively by

supporting the 1st and 2nd Defendant's applications for the dismissal of this suit. Further, that the 3rd Defendant filed Grounds in Support and submissions which were both filed on 22nd September 2010 in support of the said application. The Deponent also stated that the 3rd Defendant had filed a Statement of Defence to the Plaintiff's claim dated 27th September 2005 and is rightfully entitled to costs incurred by it in its Defence. He annexed the said 3rd Defendant's Grounds in Support, submissions, and Defence.

The Plaintiff was given several opportunities to respond to the 2nd and 3rd Defendant's Notices of Motion, and failed to do so, and the said Notices of Motion were reserved for ruling. I have read and carefully considered the pleadings by the 2nd and 3rd Defendants. The main issue before this court is whether the 2nd and 3rd Defendants are entitled to the costs of this suit. I have perused the court record and it is indeed the position that the suit herein was dismissed for want of prosecution by Mbogholi Mshaga J. on 11th November 2010 upon an application by the 1st Defendant dated 25th May 2010. The 2nd and 3rd Defendants have brought evidence of the pleadings and submissions filed in support of the said 1st Defendant's application, and the court record shows that their counsel participated at the hearing of the said application.

I have also perused the Defences filed by the 2nd and 3rd Defendants dated 26th September 2005 and 21st September 2010 respectively. Both Defendants prayed that the Plaintiff's suit be dismissed with costs. The suit having been dismissed herein on 11th November 2010 pursuant to an application in which both the 2nd and 3rd Defendants actively participated, it is the finding of this court that the 2nd and 3rd Defendants were equally successful parties in this suit just like the 1st Defendant.

The applicable law in this regard is that costs of a suit largely follow the event, and this court has discretion to determine which party will meet the costs and to what extent. The law is found in section 27 (1) of the Civil Procedure Act (Cap. 21) which states 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 material event referred to in the provisions of the said section is the result of the proceedings, and it is the successful party in this result who is normally awarded costs. This Court has already found that the 2nd and 3rd Defendants were successful in their application and suits, and they are therefore entitled to costs.

This court accordingly orders as follows:

1. The Plaintiff shall pay the 2nd Defendant's costs of his Notices of Motion dated 25th February, 2010 and 21st March 2013, and the costs of this suit.
2. The Plaintiff shall pay the 3rd Defendant the costs of his Notice of Motion dated 14th October 2013 and the costs of this suit.

Dated, signed and delivered in open court at Nairobi this ____3rd____ day of

____March____, 2014.

P. NYAMWEYA

JUDGE