



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 874 OF 2010

JOSSMAS ENTERPRISES :::::::::::::::::::: PLAINTIFF/APPLICANT

VERSUS

CITY COUNCIL OF NAIROBI :::::::::::::::::::: DEFENDANT/APPLICANT

R U L I N G

1. Before the court is a **Notice of Motion** dated **16th May 2014**. It seeks the following orders:-
 1. *That this Honourable Court be pleased to review the orders made on 2nd May 2014 dismissing the suit with no orders as to costs.*
 2. *That this honourable Court be pleased to order that the Plaintiff/Respondent be condemned to pay costs of this suit.*
 3. *That the costs be in the cause.*
2. The application is premised on the following grounds:-
 1. *That the suit was dismissed on 2nd May 2014 with no orders as to costs for want of prosecution.*
 2. *That the advocate appearing for the Defendant/Applicant inadvertently failed to urge the court to award costs to the Plaintiff.*
 3. *The Defendant has been put to loss and expense in defending this suit and it is only fair that the Plaintiff indemnifies the Defendant for party and party costs incurred as a result.*
 4. *That in the interest of justice that the orders sought be granted.*
3. The application is supported by affidavit of **STEVEN KARIUKI MBURU** dated **16th May 2014** which merely expands on the above grounds.
4. The application is not opposed. The application was served upon the Plaintiff's advocates together with a Hearing Notice thereof. An affidavit of service in proof of the same was filed in court on **5th June 2014**. On that basis, I allowed the Applicant to proceed *ex-parte*.
5. In brief the background of the application is that this court on **2nd May 2014** dismissed the suit within for want of prosecution under Order 17 Rule 2 of the Civil Procedure Rules 2010 with no orders as to costs. The Notice of Show Cause dated **24th April 2014** was served upon all the parties but on that day neither the Plaintiff nor its Advocate attended the court, while the Defendant was represented by counsel. The Defendant's counsel also prayed for the dismissal of the suit but did not ask for costs, hence this application for costs.

6. I have considered the application. The general rule is that costs of the suit follows the event, and unless there are good grounds why a losing party should not pay costs, the losing party will most certainly pay the costs. It is true that this suit has caused the Defendant loss of expenses in defending the same. It is a fair request for costs.
7. In the upshot, I herewith allow the review of the orders of this court made on 2nd May 2014 and order that the Plaintiff shall pay the costs of this suit. The costs of this application shall be in the cause.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 4TH DAY OF JULY 2014

E. K. O. OGOLA

JUDGE

PRESENT:

No appearance for Plaintiff/Respondent

Kariuki for Defendant/Applicant

Teresia – Court Clerk