



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**MISC APPLICATION NO. 311 OF 2011**

**THE ROOTS LTD.....PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTING CO. LTD.....DEFENDANT**

**RULING**

1. On 22<sup>nd</sup> January 2013 the court was informed by the learned advocates for the parties that the substantive issue in this matter (contempt of court) was settled by the parties and that the only issue outstanding was costs of the proceedings. The terms of settlement were not disclosed to the court. On 15<sup>th</sup> February 2013 an order was entered in terms of a consent letter dated 4<sup>th</sup> and filed on 11<sup>th</sup> February 2013. That consent was -

**“1. That this matter be and is hereby marked as settled between the parties.**

**2. That the issue of who bears the costs be determined by the Court.”**

2. Without disclosure to court of the terms of settlement, and short of deciding the merits of the parties' relative cases in the substantive dispute, how else could the court make an informed decision on exercise of its discretion under **section 27(1)** of the **Civil Procedure Act, Cap 21**? What would be the event envisaged in the **proviso** to that subsection?

3. The court cannot do the impossible. The only sensible order to make in the circumstances is that each party bears its own costs of the proceedings. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 2<sup>ND</sup> DAY OF JULY 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF JULY 2013**