

REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA.

HCA. CASE NO. 1 OF 2016.

CALEB MIHESO IJAMI 1ST PLAINTIFF

TALICHI MALOBA.....2ND PLAINTIFF

VERSUS.

JOSEPH NDETSWA MBIRA & ANOTHER. RESPONDENTS

JUDGMENT.

[1]. The appellant herein filed this appeal against the ruling of S.M. Shitubi (CM) of 20.3.2013 erroneously pleaded as ruling of C. Kendagor Ag. SRM. He sets five grounds of Appeal. The first being that the learned Chief Magistrate erred in law in not appreciating that the appellant herein had filed an application pending before the Court, that the learned Magistrate erred in taxing the costs when there was an application to set aside the entire proceedings. That the learned Magistrate erred in Law in not according the appellants their day in court and that the learned Magistrate erred in law in disregarding the issues raised by their appellants in their application before the Court and that he failed In-law in not observing the rules of natural justice.

[2]. The suit giving rise to this appeal was dismissed on 9/9/2009 by H.I. ONGU'NDI (CM) Under order XVI rule 2. The respondent filed a bill of costs on 29/6/2010. The same came up for taxation on 11/8/2010 the appellants said they never received the notice for dismissal. The matter was adjourned with costs and the applicants were ordered to pay Court Adjournment Fee. Application was to be filed and served within 21 days. The bill of costs came up for taxation on 20/3/2013. It was opposed. A ruling was made by the Chief Magistrate. The objection was dismissed and the bill was taxed as drawn for Kshs.57,880/=

[3]. It is against such taxation that the appeal was preferred on the basis that there was a pending application to set aside the dismissal of the suit for want of prosecution. Under the Civil Procedure Act Sec. 27. Costs shall follow the event. In other words if the court does not specifically give an order of costs they will always follow the outcome of the suit. In this case the Plaintiffs suit was dismissed as against the defendant. The defendant was within his rights to draw a bill of costs. Costs are discretionary. The learned Chief Magistrate exercised his discretion in favour of the defendant and dismissed the objection. It was not shown in this application that the exercise of that discretion was not judicious or that the learned Chief Magistrate erred in Law. An appellate court will not normally interfere with the exercise of discretion if there is no mistake, or error or proof that the discretion was exercised capriciously. It was also not shown that the award of these costs occasioned prejudice to the appellants, that would not be remedied or capable of being compensated by money, if their application to set aside the dismissal for want of prosecution was to be allowed.

This appeal has no merits and it is dismissed with costs.

Judgment read in open Court.

DATED at BUNGOMA this 23rd day of May, 2017.

S. MUKUNYA

JUDGE.

In the presence of:

Gladys/Joy: Court Assistant

Parties are absent

Parties are served

R/S (Return of Service) filed.