



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ELC NO. 245 OF 2013

MUNICIPAL COUNCIL OF MAVOKO...PLAINTIFF/APPLICANT

VERSUS

GALOT INDUSTRIES LIMITED.....DEFENDANT/RESPONDENT

RULING:

The matter coming for determination is a Notice of Motion application dated 4th October, 2012 seeking for orders that;

- i. ***The suit herein be marked as compromised.***
- ii. ***The Defendant/Respondent do pay costs for the Defended suit and the application.***

The application was supported by the Affidavit of **Patrick Kahonge, Advocate** who averred that he was the advocate in conduct of the matter and that on or about 23rd day of June, 2011, the Defendant paid its entire rates to the plaintiff. That the Defendant paid the entire rates thus compromising the suit and the Plaintiff is entitled to cost.

In his Replying Affidavit, **Mohan Galot**, the Director of the Defendant Company averred that the suit herein was compromised on the agreement that each party will bear its costs of the suit. He urged the court to allow the application dated 4/2/2012 with condition that each party will bear its costs of the suit.

The applicant filed a further affidavit and averred that the Defendant having paid all the rates to the Plaintiff, an agreement was reached between the Plaintiff and the Defendant that the suit be compromised and be marked as settled and that the Defendant meets the costs of the suit and not the Plaintiff as alleged by the Defendant. He reiterated that the Defendant should meet the costs of the suit and costs followed the event.

The Respondent reiterated that costs should follow the event and that the instant application is an abuse of the process of the court.

The parties herein have settled on prayer No. 1. The suit herein is marked compromised, the Defendant having paid all the outstanding rates.

The issue now for determination is prayer No. 2. The parties consented to canvass prayer No.2 by way of written submissions. I have now carefully considered the written submissions and the relevant laws. I have also considered the quoted authorities and I have addressed my mind to the fact that costs are

in the unfettered discretion of the Court, subject to such conditions and limitation as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event, unless the court has good reason to order otherwise

(See judicial Hints on Civil Procedure by R.Kuloba).

The issue of costs is provided for in **Section 27(1)** of the **Civil Procedure Rules** 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 extend such costs are to be paid, and to give all the necessary directions for the purposes aforesaid , and the fact that 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”.

There is no doubt that the applicant herein filed a suit against the Defendant for payment of **Kshs. 12,842,540/=** as land rates arrears. The defendant filed its Defence on 10th February, 2010 and denied each and every allegation contained in the Plaintiff. However, by a letter dated 28th May, 2013 the Plaintiff informed its advocate **Macharia Kahonge & Co.Advocates** that the Defendant has paid up the outstanding rates and has been issued with the clearance certificates. For that reason , the applicant filed the instant application and sought for costs.

However, the Defendant alleges that there was consent on costs that each party should meet its costs.

It is evident that the question of costs is one for the discretion of the court. However, costs will follow an event. The event means the result of the entire proceedings incidental to the litigation. The **“event”** is the result of the entire litigation. In the instant suit, the plaintiff filed a suit against the Defendant. The Defendant settled the demanded amount out of court and got rates clearance certificate.

The Plaintiff is therefore the successful litigant herein. Though the Defendant alleges that the parties herein did enter an agreement to have each party meet its costs such agreement was not filed in court. Since it is not in doubt that costs normally follow the event; the party who succeeds is entitled to have his costs paid by the party who loses, the Plaintiff herein is the successful litigant and is entitled to costs.

Though the court has discretion in the matter of costs that discretion must be exercised judicially. I will rely on the case of **Hussein Janhomamed Vs Twensche Overseas Trading Co.Ltd (1967) EA 287 Pg 292.** Where the Court held that:-

“To my mind, not only where there is no proper grounds for the exercise of the Courts discretion is depriving the successful defendant of his costs, which as noted would constitute an in judicial exercise of the discretion, but the purported ground were as indicated not supported by any evidence”

Having now considered the pleadings generally, the relevant law and the written submissions, I find that the applicant herein is the successful litigant and since costs follow the event, it is entitled to costs.

For the above reasons the court allows the Plaintiff/Applicant’s application in term of prayer **No.2**. The Defendant/Respondent to pay costs of the suit and the application herein.

It is so ordered.

Dated, signed and delivered this **23rd** day of **May** , 2014

L.GACHERU

JUDGE

In the Presence of:-

.....for the Plaintiff/Applicant

.....for the Defendant/Respondent

Lukas: Court Clerk

L.GACHERU

JUDGE