

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 520 OF 2009

EAST AFRICAN SCHOOL OF

MANAGEMENT LTD.....PLAINTIFF

VERSUS

PLASTIC CARD TECHNOLOGIES LTD.....DEFENDANT

RULING

The plaintiff herein was a tenant of the defendant. A dispute arose relating to the tenancy following an increase of rent by the defendant which was said to be unilateral. The plaintiff then filed a case against the defendant claiming breach of the terms of the tenancy agreement and prayed for injunction orders set out therein.

This was followed by an application by way of Chamber summons claiming interim orders of injunction as set out in the plaint. The court granted interim orders pending hearing *inter partes*. In the meantime, the defendant filed a Notice of Preliminary Objection stating that the court had no jurisdiction to hear the dispute as the Business Premises Rent Tribunal was the one vested with such jurisdiction. Subsequently however, the parties entered into a consent whereby the suit was compromised.

It is important to note the following dates. The suit was filed on 5th October, 2009 which is also the same date when the application for injunction orders was filed. The defendant's advocate came onto the record on 14th October, 2009 by filing a Notice of Appointment of Advocates. The Notice of Preliminary Objection was filed on 14th October, 2009. The consent to compromise the proceedings was recorded before Waweru J on 19th November, 2009. In effect this suit was compromised within a period of one and half months.

The consent order did not address the issue of costs and that is the subject of this ruling. Both parties have filed submissions on that issue. The plaintiff submits that had it not been for the defendant's breach of the lease agreement, this suit would not have proved necessary. On the other hand, the defendant submits that no costs are due as the matter was compromised. Section 27 of the Civil Procedure Act provides *inter alia*, that costs are at the discretion of the court which has full power to determine by whom and to what extent such costs are payable. However, it is also provided that costs shall follow the event unless the court shall for good reason otherwise order.

This case did not go to full hearing. I have set out the dates and the time taken to resolve the issue for good reason. Had this matter gone to full hearing and plaintiff succeeded, then costs would have been ordered to be awarded to it. Conversely, had the case been dismissed, the defendant would have been awarded costs. The "event" in this case is the compromise grounded on the consent recorded by the court. That being the case, it is my view that both parties were winners in the circumstances of the case. That compromise facilitated the cordial relationship of the parties as provided in the lease agreement.

Taking all circumstances of this case into consideration, the order that commends itself is that each party shall bear their own costs. It is so ordered.

Dated, signed and delivered at Nairobi this 15th Day of March, 2019.

A.MBOGHOLI MSAGHA

JUDGE