



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

MISC. APPLICATION NO. E061 OF 2018

RSA LIMITED.....APPLICANT

VERSUS

THE MANAGING DIRECTOR

KENYA INDUSTRIAL PROPERTY INSTITUTE

(KIPI).....DEFENDANT

AND

CRUISE EAST AFRICA LIMITED & THREE OTHERS.....INTERESTED PARTY

RANA BODY SHOP LIMITED.....2ND INTERESTED PARTY

ISLAND SPRAY PAINTERS LIMITED.....3RD INTERESTED PARTY

TOYOTA KENYA LIMITED.....4TH INTERESTED PARTY

RULING

1. By a notice of originating motion dated 7th September 2018, the Applicant sought for a declaration order to compel the Respondent renews Industrial designs for two executive terms of five (5) years. The subject designs are tabulated under paragraph 2 of the motion. The Applicant also sought for costs. The motion was supported by the grounds thereto, and the affidavit sworn by Manmoham Singh Bharna, dated 7th September 2019.

2. Upon service of the motion, the 4th Interested party filed a replying affidavit dated 27th September 2018, sworn by Simon Mwitii, the Respondent’s general. The 1st Interested party also filed a replying affidavit dated 27th September 2018, sworn by its director Manik Singh Choda, and the 2nd Interested party filed replying affidavit dated 4th October 2018 was sworn by its director Mr. Pritam Singh Pannu. Finally the 3rd Interested party filed its replying affidavit on the of 4th October 2018, having been sworn by its director Mansoor Salim Mohammed.

3. On 10th September 2018, the matter came up for hearing court under certificate of urgency, and was ordered served for inter parties directions on 12th Septembers 2018. On that date, the Applicant’s Advocate informed the court that he had served the Respondent and filed an affidavit of service. The Learned Counsel Ms. Davi informed ding brief for the Learned Counsel Mr. Musangi opposed for the proposed” Interested party and the learned Counsel Mr. Mbaluto appeared for the proposed 4th Interested party. Notably, the Respondent was absent.

4. From the record and address of Ms. Davi their client had been served with the”originating notice of motion” and intended to oppose the application. The same was the position of the 4th proposed Interested party. The court gave directions on the filing of responses and/or submissions.

5. Subsequently on the 30th November 2018, the Applicant’s Counsel informed the court that the gist of the matters was the failure of the Respondent to accept the Applicant’s application for registration however the application had been overtaken by events. He sought to

withdraw the matter. Mr. Mbaluto and Ms Davi for the Interested parties had no objection to the withdrawal of the matter save for costs.

6. However, the court directed that a proper notice of withdrawal be filed. It was eventually filed on 6th December 2018. Upon the filing and serving thereof, the interested parties protested that their costs had not been catered for, but the Applicants opposed the prayer for costs.

7. The court then directed the parties to file skeleton submissions on the same. That was not done. Be that as it may, it is clear that the only issue to determine is whether the interested parties are entitled to costs. I have considered the circumstances of this case and I find as follows:-

(a) The Applicant did not file the certificate of urgency and/or the originating notice of motion both dated 7th September 2018 against any of the Interested parties herein, it was against the Respondent alone;

(b) However, it does occur that the Applicant served the Interested parties with the applications, hence their appearance in the matter;

(c) Be that it were, the Advocates notice of appointment filed on 13th September 2018, by the firm of Oraro & Company indicates they were appearing for the 4th Interested party. The replying affidavits filed by the 1st, 2nd and 3rd interested parties have been filed by the firm of LJA Associates although there is no evidence of filing of the notice of appointment;

(d) Although the Interested parties came into the matter as “proposed” Interested parties, and did not seek to formally come on record as such, by conduct of the parties and in particular in the matter, they were ratified as Interested parties and allowed to file responses to the Applicant’s documents.

8. It is therefore clear that the interested parties have participated in this matter by filing replying affidavits and as the law states, the costs follow the event. In that regard, if the Applicant served the interested parties with the application(s), then, the Applicant should pay their costs. They should be paid as per the costs.

9. Those then are the orders of the court.

Dated, delivered and signed in an open court this 30th day of September 2019

G.L. NZIOKA

JUDGE

In the presence of:

Mr. Kamwenda for the Applicant

Ms. Davi for 1st to 3rd Interested parties

Mr. Kwaka holding brief for Mbaluto for the 4th interested party.

Dennis -----Court Assistant