



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
JUDICIAL REVIEW NO. 17 OF 2013
IN THE MATTER OF KISII UNIVERSITY

AND

IN THE MATTER OF BREACH OF RULES OF NATURAL JUSTICE

AND

**IN THE MATTER OF DISCONTINUATION OF THE APPLICANT FROM THE
RESPONDENTS INSTITUTION**

ESTHER CONSOLATA MWANIA.....APPLICANT

VERSUS

EGERTON UNIVERSITY1ST RESPONDENT

KISII UNIVERSITY.....2ND RESPONDENT

RULING

1. This Judicial Review Application was bought on the 8th April 2013 Esther Consolata Mwanja represented by the firms of B. Musyoki & Co. Advocates against the 1st and 2nd respondents, Egerton University and Kisii University respectively.

2. A perusal of the court proceedings indicate that Nyairo & Co. Advocates represented the 2nd Respondent while the 1st Respondent is presented by Gekong'a & Co. Advocates.

3. It is on record that on the 5th August 2014 a consent order compromising the application was executed between the Applicant and the 2nd respondent and filed on the 22nd May 2014.

The applicant was awarded costs of the application, but no mention was made on costs for the 1st respondent.

4. By a further consent between the applicant and the 2nd respondent dated 7th October 2017 and filed on the 15th February 2017, the case was marked as settled. I have been requested to adopt the above consent orders.

Adoption of the same would mark the Judicial Review application as settled including orders of costs as

stated in the consent dated 5th August 2014 and filed on the 5th February 2016.

5. Parties here disagree on whether or not the 1st Respondent who was not provided for in costs in both consents, should be paid costs and by which party.

6. From the records and submissions by the 1st Respondents advocates, it is evident that the 1st Respondent was not a party to the consents that settled the suit. Needless to state, as a party, the 1st Respondent ought to have been called upon to participate in the negotiations leading to the consent orders. The consent order provided for costs to the applicant only and payable by the 2nd Respondent.

The 1st respondent seeks that costs of the Judicial Review application be provided for.

7. An award of costs is ordinarily granted to the successful party in a suit, but upon the court's discretion. **Section 27 of the Civil Procedure Act** gives the court the discretion to determine by whom and to what extent costs are to be paid. It further provides that costs shall follow the event unless the court shall for good reason otherwise order. The applicant brought both the 1st and 2nd respondents to the court. They must have expended money towards disbursements court attendances and other incidentals. The applicant was awarded costs in the consent executed by the applicant and the 2nd respondent. It has not been explained why the 1st Respondent was left out of the consent. There being no reasons or rational to deny the 1st Respondent costs of the compromised suit, I find that the 1st Respondent is entitled to costs of the suit.

8. As to who between the Applicant and the 2nd respondent should pay such costs, I find that as the two parties failed to invite the 1st respondent to the negotiations leading to the compromise order, the Applicant and the 2nd respondent shall equally share costs to the 1st Respondent, such costs to be agreed or taxed.

I further direct that the said costs be taxed or be agreed and a consent order be recorded.

9. Before this is done, the court will not adopt the consent orders recorded as by doing so without first resolving the issue of costs to the 1st Respondent would be prejudicial to its entitlement of costs.

10. Parties are at liberty to apply for adoption of the consent orders once the issue at hand is resolved.

11. It is so ordered.

Dated, Signed and Delivered this 25th Day of May 2017.

J.N. MULWA

JUDGE