

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO. 71 OF 2015

KUNDAN SINGH CONSTRUCTION

INTERNATIONAL LIMITED ::::::::::::::::::::::::::::::::::: PLAINTIFF

-VERSUS-

BANK OF AFRICA KENYA LTD. :::::::::::::::::::::::::::::::::::DEFENDANT

-AND-

KENYA COMMERCIAL BANK ::::::::::::::::::::::::::::::::::: INTERESTED PARTY

R U L I N G

1. The Application before this Court is the **Notice of Motion** dated **21st May 2015** and filed by the Plaintiff but which has since been withdrawn. The issue now before the court is on costs. Mr. Odoyo for the Applicant urged the court not to allow costs for the application. However Messrs. Musyoka and Karungo for the Respondents insisted on costs, with Mr. Karungo submitting that the Plaintiff is not acting in good faith when he purports to withdraw the suit herein and the application, while at the same time filing the same suit afresh being HCCC No. 269 of 2015 of the same parties.
2. I have considered these submissions. In my view, the Respondents have suffered costs in responding to the application before the court. I allow the withdrawal of the said application with costs to the Respondents. Again, since the main suit herein has also been withdrawn, the costs of the same shall be for the Defendant and the Interested Party.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 31ST DAY OF JULY 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Odongo for the Plaintiffs

Mr. Musyoka holding brief for Karungo for the Defendant

Mr. Musyoka for the Interested Party

Teresia – Court Clerk