



IN THE HIGH COURT OF KENYA AT KISUMU

JUDICIAL REVIEW NO. 14 OF 2010

WILLIAM OTIENDE DIDI.....APPLICANT

VERSUS

KISUMU MUNICIPAL COUNCIL.....RESPONDENT

RULING

The notice of motion dated 25-7-2013 prays for orders that:

- a. **An order that this suit be ordered compromised by the court to have been fully compromised and judgment be entered in favour of the applicant.**
- b. **The respondent be condemned to bear the costs of this suit.**

The substantive application in this matter was the application dated 25-5-2010 where the applicant had sought the writs of certiorari and mandamus against the respondent who had apparently dismissed him from the employment. However while the application was pending there seemed to have been understanding between the parties themselves and not involving their counsels. This is so because on 5-2-2013 the respondent wrote to the applicant a **“Reinstatement”** letter with the following terms:

“This reinstatement is in condition that:-

- i. ***You meet the legal costs arising from your side of the suit.***
- ii. ***You withdraw all pending cases against the council.***

Consequently, you be reinstated with full benefits effective March 2010. If in agreement, inform the undersigned in writing to enable action by the copied officers”.

The applicant on 6-2-2013 replied as follows:

“I have received your letter of reinstatement dated 5-2-2013 with thanks. Consequently, I have accepted wholeheartedly. The conditions in the reinstatement will be dealt with by my advocates on my advice, but will not jeopardize my decision. Therefore, with immediate effect you may go on with other arrangements to enable action by your officers”.

The fact that the applicant was reinstated has not been disputed. Does this therefore compromise this suit? And if it does who should meet the attendant cost if any?

I have read the respective rival affidavits as well as the submissions herein. The respondent suggest that the said letter does not compromise the substantive application. It is neither meritorious the suits which ought to be withdrawn by the applicant.

As earlier indicated the parties themselves have addressed correspondences to each other. None of the two letters were addressed to either counsels. The only indication by the respondent is that his lawyer was to deal with the conditions of reinstatement.

The reading of the two letters wholesomely indicate that the respondent was conditionally reinstating the applicant. It went further to actually reinstate him. The reinstatement was based on the fact that the applicant accepts the two conditions. Without hesitation the applicant accepted the offer. Having accepted the offer therefore, the primary condition was taking back the job which he did and the affidavit confirms the same. This I find was the substantive prayer in the Judicial Review application. Having taken back the job I do find that the substantive prayer has been compromised. If he was dissatisfied then he ought not to have taken the offer.

What about the conditions? Again the acceptance was premises upon him accepting the conditions. Although he qualified the acceptance by a clause that his lawyers would deal with the other conditions he nevertheless went ahead to accept the offer. If there was any doubt on the conditions he would have not taken over the job till his counsel advice him otherwise.

As noted above the litigants seemed to have reached a compromise outside their legal advisers. Reading both correspondences wholesomely the conditions for accepting the reinstatement was based on the two conditions in the respondent's letter.

Having found that the Judicial Review application herein has been compromised who should meet the costs? The applicant has argued that the respondent ought to pay the costs. My finding is that since he accepted the conditions which indicated the withdrawal of the suits and meeting the legal costs, it is the applicant who should meet the respondent's costs. Alternatively, since he knew that he was being reinstated conditionally, he would not have taken the offer.

The respondent has argued that the respondent's letter does not contain the details of the suits which ought to be withdrawn. However, and whereas this is true the respondents said letter contains the details of the minutes which are being impugned. It is not true therefore to suggest that the suits were not known by the parties.

Finally, it is now trite law that costs follow, the event. The suit was brought by the applicant. The same was duly defendant by the respondent. Subsequently, he reached an out of court settlement with his employer. The respondent I suppose must have incurred some costs. This cost ought to be shouldered by the applicant.

I find in conclusion that the action by the applicant has compromised the Judicial Review proceedings herein as this was the primary prayer in the application. Equally, the acceptance of the conditions by the applicant means that he ought to shoulder the attendant costs. This suit by virtue of the above reasons shall be marked as settled with costs to the respondent.

I do rule further that these orders shall apply to Kisumu HCC MISC. Application No. 188 of 2006 between the parties herein.

Orders accordingly.

Dated, signed and delivered at Kisumu this 23rd day of July, 2014.

**H.K.
JUDGE**

CHEMITEI