



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC. CIVIL APPLICATION NO. 61 & 62 OF 2010 (JR) (CONSOLIDATED)

IN THE MATTER OF AN APPLICATION BY ALI ABDULLAHI AHMED AND KUSO

DAHIR ALI FOR A JUDICIAL ORDER OF PROHIBITION

AND

IN THE MATTER OF SECTION 148 OF THE LOCAL GOVERNMENT

ACT CHAPTER 265 OF THE LAWS OF KENYA

BETWEEN

ALI ABDULLAHI AHMED.....1ST APPLICANT

KUSO KAHIR ALI.....2ND APPLICANT

VERSUS

CLERK COUNTY COUNCIL OF WAJIR.....1ST RESPONDENT

CLERK, COUNTY COUNCIL OF MANDERA.....2ND RESPONDENT

R U L I N G

This is a ruling on costs of the Application dated 30th December, 2013 filed by the applicants Ali Abdullahi Ahmed and Kuso Kahir Ali. The application was against the respondent County Council of Wajir seeking for orders to commit the 1st respondent to civil jail for disobeying a court order made by Muchelule J. on 19th September 2011.

On 13/10/2014 the parties appeared before the Deputy Registrar and on application by the applicant, the application was marked as withdrawn. The applicant was not willing to give costs to the 1st respondent who was adamant that it had to be paid his costs. The matter was then referred to this court to rule on the issue of costs.

The parties through their advocates addressed this court on the issue. Mr. Juma for the 1st respondent argued that the application was not properly before the court because a non-existent party had been sued. Secondly that the procedure in filing the application for contempt was not complied with.

Mr. Odhiambo for the applicants argued that after the ruling of Muchelule, J. restraining the 1st respondent from levying cess, the 1st respondent continued to collect the cess from the applicants. This precipitated the applicant to file the said application.

The county government of Wajir was rightly sued because it took over all the affairs of the now defunct Wajir County Council. He said there was an appeal against the judgment of the High Court in Nyeri. The judgment was delivered on 23/3/2014 whereby the court allowed the appeal in regard to the 1st respondent.

The applicants argued that their application was in order until the court of appeal judgment was delivered. For that reason, the applicant's argue that they are entitled to costs. It is established law that costs follow the event and must reflect the compliance with the law and the conduct of the parties. I rely on the case of **REPUBLIC VS NAIROBI BUSINESS PREMISES TRIBUNAL & OTHERS & EXPARTE KARASHA KLR [1976-80] page 1263** where the landlord who had obtained possession of demised premises without going through the process of the law was condemned to meet the costs of an appeal.

In this matter, the applicant rushed to court to file an application for contempt of court without seeking leave of the court as required by the law. The party sued was the county council of Wajir who was not in existence upon the establishment of the county Government. The applicant ought to have exercised due diligence when filing the application first by ensuring that the parties were substituted first.

The issue of service on the contemnor named as the county clerk of Wajir County also raises some pertinent legal issues. All these issues put together diminished the chances of success of the application. The application was served on the respondent who instructed his counsel to defend it. He did quite some work in filing grounds of opposition and preparing and filing submissions, in addition to attending court a few times. It would be unjust to the respondent to deny him costs of this application which has already been withdrawn.

The argument by the applicant that the application was in order until the court of appeal delivered its judgment on 23/03/2014 is not convincing taking into consideration all the above named flaws.

I find that the 1st respondent is entitled to costs from the applicant. It is hereby ordered that the application be marked as withdrawn with costs to the 1st respondent.

DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF DECEMBER, 2014.

F. MUCHEMI

J U D G E

In the presence of:-

Mr. Odhiambo for Applicants

Mr. Mungai for Juma for 1st Respondent

F. MUCHEMI

J U D G E