



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
Environmental & Land Case 469 of 2010

IN THE MATTER OF AN INTERPLEADER APPLICATION

BETWEEN

FAUSTINE NJOROGE NJUGUNA1ST PLAINTIFF

JENNIFER NJERI KARIUKI2ND PLAINTIFF

VERSUS

HARRISON KINYUA GITHENYA1ST DEFENDANT

WINNIE KANARIO KINYUA2ND DEFENDANT

RULING

The Plaintiff filed this suit against the Defendants seeking for two principal orders.

The 1st Defendant entered appearance and filed a replying affidavit on 12th October, 2010. When the matter came up for hearing, the parties recorded the following consent:

“That the application dated 5th September, 2010 be and is hereby marked as settled on the following terms:

(a) Kshs.750,000 be paid by the applicants as follows:

Kshs.225,000 to Paul Mungla & Co. Advocates.

Kshs.225,000 to P.M. Ndungu & Co. Advocates. The payments to be made on or before the 14th December 2010

(b) Kshs.150,000 to be paid to Paul Mungla & Co. Advocates and Kshs.150,000/= to be paid to P.M. Ndungu & Co. Advocates payments to be made on or before the 15th January, 2011.

(c) In default, execution to issue.

(d) Status quo to be maintained.

(e) The originating summons dated 5th September, 2010 to proceed to hearing on viva voce evidence and on priority basis.

(f) Parties do file such other affidavits as may be necessary by 15th January, 2011.

(g) Parties to file agreed paginating bundle of documents by 21st January, 2011.

The Plaintiff failed to pay rent and according to the 1st defendant, distress for rent was executed to recover the outstanding rents.

When the Plaintiff's goods were distressed, the parties negotiated the terms of their release and on 4th August, 2011, the plaintiff voluntarily vacated the 1st Defendant's premises. Further, the Plaintiff witnessed the suit against the Defendant on 20th September, 2011. It is against background that the Plaintiff requested for Judgment on costs be paid by the Plaintiff in respect of this suit.

The plaintiff opposed the payment of costs on the ground that the Plaintiff was evicted from the suit premises so as to destroy the subject matter. Since the Plaintiff was evicted from the suit premises, the suit became useless and that is why it was withdrawn.

It is not disputed that the Plaintiff filed this suit against the defendants and later withdrew the suit. The argument that the suit became useless after the Plaintiffs were evicted from the suit premises lacks merit. The Plaintiff could have amended the suit to include additional prayers for eviction. The Plaintiff instituted this suit against the Defendants and withdrew it on his own volition. Accordingly, the Plaintiff should pay the costs to the 1st Defendant. The 1st Defendant to file a Bill of Costs for determination by the Taxing Master.

Ruling Read and Signed this 20th day of January, 2012.

**MARTHA KOOME
JUDGE OF APPEAL.**