



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
Commercial Civil Suit 14 of 2002

OCEAN VIEW BEACH HOTELPLAINTIFF/RESPONDENT

VERSUS

KENYA POWER & LIGHTING COMPANY LTD.....
.....DEFENDANT/APPLICANT

RULING

1. The application herein dated 18th March, 2012 seeks that the honorable court do review its Ruling dated 18th February, 2012 with regard to the order directing the Defendant applicant to pay costs. It is premised on the grounds that the application subject of the Ruling before court was unopposed, and that it will cause prejudice to the Defendant applicant to be referred to pay costs.

2. This application was responded to by the Replying Affidavit of John Owiti Senior Manager of the Plaintiff sworn on 19th April, 2012. Essentially he says that the Applicant cannot intimate that the court acted without a legal mind, and that nothing has cropped up to warrant the court to disturb its earlier ruling.

3. The parties were directed to file written submissions but only the applicant did so, despite an extension of time. The applicant quoted my earlier Ruling where I found as follows:

Paragraph 15: “The Notice of change of Advocates and the Preliminary Objection are invalidly on record and are hereby expunged”

Paragraph 16: “The motion herein is wholly undefended”.

4. Order 45 Rule 1 (1) which is invoked in the application provides for review. It gives the court a wide discretion for review when new matters or evidence have been discovered, or there is a mistake or error apparent on the face of the record or **“for any other sufficient reason”**.

5. Having read through my said earlier Ruling and having further noted that I observed the unique

circumstances of the case and that it would be inappropriate for this court to usurp the functions of the lower court, (paragraph 20) and further that there was gravity in the matters raised by the Defendant/ Applicant by that application (paragraph 21) which was brought to clarify which of two decrees issued was to proceed to execution, I am satisfied that there is **“sufficient reason”** in terms of order 45 to review my earlier decision.

6. It is evident that my Ruling was sought to bring clarity to the question of which of two rulings should be executed and how that would be done. Accordingly, I am satisfied that, although I dismissed the Defendant/Applicant’s application, the correct order as to costs should have been **“Costs in the cause”**. The Defendant Applicant should not have been encumbered with the costs in this case”.

7. Accordingly, I hereby review the last paragraph of my said Ruling dated 16th February, 2012 on costs, so that the order shall hence forth read as follows:

“The application herein is therefore dismissed. Costs shall be in the cause, and the extent interim orders of 9th June, 2011 issued by this court are hereby vacated.”

The costs of the present application shall also be in the cause.

Dated, signed and delivered this 26th day of July, 2012.

R.M. MWONGO
JUDGE
Read in open court
Coram:

1. Judge: Hon. R.M. Mwongo
2. Court clerk: R. Mwadime

In Presence of Parties/Representative as follows:

- a)
- b)
- c)
- d).....