



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

Civil Case 1305 of 2006

ERASTUS KIBUGI WAHOME..... PLAINTIFF

VERSUS

NATIONAL HOUSING CORPORATION..... DEFENDANT

R U L I N G

1. On 30th May 2008 this suit was settled by consent (except the issue of costs) as follows –

“By consent-

(i) The amount now due and outstanding upon the loan advanced by the Defendant to the Plaintiff is KShs 104,600/00. This sum shall not attract any further interest except in the event of default of payment as provided hereunder.

(ii) The Plaintiff shall pay the said sum of KShs 104,600/00 by monthly installments of KShs 20,000/00 every 15th day of the month w.e.f. June 2008 until payment in full.

(iii) Upon payment in full of the said sum the suit shall stand settled except the issue of costs.

(iv) In default of payment as provided in clause 2 above, the terms of contract between the parties shall apply.

(v) The issue of costs shall be determined by the court after submissions thereon by the parties. Parties to put in written submissions.”

2. This ruling therefore concerns only costs of the suit. The parties filed their written submissions respectively on 8th July 2008, which I have read and duly considered. No authorities were cited.

3. The Plaintiff’s suit was for damages arising out of the Defendant’s action of locking the suit premises and threatening to repossess them. The suit premises had apparently been purchased by the Plaintiffs from the Defendant.

4. The Defendant's case was that the Plaintiff had not made full payment for the premises and was in default.
5. The parties negotiated and arrived at the settlement out of court. But like all fruitful negotiations, it must have involved some give and taken. Ultimately the Plaintiff agreed that he owed to the Defendant some money, but apparently not as much as the Defendant had demanded.
6. Costs are at the discretion of the court, provided that costs will normally follow the event unless the court shall for good reason otherwise order. See **section 27 of the Civil Procedure Act, Cap 21.**
7. The suit herein was not heard. The event here was thus a win-win situation for both parties arrived at upon negotiations out-of-court. **In the circumstances the order that commends itself to me is that the parties bear their own costs of the suit. It is so ordered.**
8. The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have now regained my full health.

DATED AT NAIROBI THIS 10TH DAY OF SEPTEMBER 2012

H. P. G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF SEPTEMBER 2012