



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Judicial Review 23 of 2012

IN THE MATTER OF: AN APPLICATION BY NYALI CHILDREN

**HOSPITAL LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI AND PROHIBITION AGAINST MUNICIPAL COUNCIL OF MOMBASA**

BETWEEN

**NYALI CHILDREN HOSPITAL LIMITED..... APPLICANT
AND**

MUNICIPAL COUNCIL OF MOMBASA RESPONDENT

RULING

1. The only question I am asked to settle is whether the Ex-parte Applicant should be awarded costs of these proceedings.

2. The synopsis. Pursuant to leave granted on 29th February 2012 the Ex-parte Applicant commenced Judicial Review proceedings on 20th March 2012 seeking the following orders-

(a) AN ORDER OF CERTIORARI to remove to this Honourable Court to be quashed the decision of the Municipal Council of Mombasa (the Respondent herein) made and contained in the Kenya Gazette Notice No. 441 at Page 97 of the Kenya Gazette dated 13th January 2012 imposing a charge of Kshs. 20,000/- per month per hospital as Refuse Collection and dumping fees.

(b) AN ORDER OF PROHIBITION prohibiting the Respondent from demanding and collecting the Refuse Collection and Dumping fees contained in the Gazette Notice No. 441 of 13th January 2012 from the Applicant herein.

3. This matter never went to full hearing because, as it turned out, this same Court rendered a Judgement on 26th July 2012 in **Misc. Application No. 10 of 2012 Republic –Vs- Municipal Council of Mombasa, Ex-parte Suleiman Said Shabal** (hereinafter **Misc. No. 10 of 2012**) in which the decision sought to be impugned here was quashed. It was thereafter unnecessary for the matter to proceed for hearing.

4. Mr. Buti appearing for the Respondent thinks that the Ex-parte Applicant should not insist on costs as this would amount to punishing the Respondent twice. He asked Court to consider that the Respondent is a public body and that the Applicant had an opportunity to join the proceedings in Misc. No. 10 of 2012.

5. The Ex-parte Applicant insists on costs. Through Counsel, the Applicant made the point that the prayers it sought here were distinct from those in **Misc. No. 10 of 2012**. That the only common ground was that they dealt with Refuse and Garbage Collection. In any event no attempt was made by the Respondents to consolidate the two proceedings.

6. The general rule is that costs follow the event. While the Court has discretion in this matter, it would not deprive a successful party of costs unless there are good reasons. Undoubtedly the Applicant herein has succeeded in the cause as the Court has held elsewhere that the issues raised are merited. Whilst it may have been possible to consolidate **Misc. No. 10 of 2012** and these proceedings, none of the parties moved Court to do so. Consolidation would have led to a saving of costs for all parties involved. But the Respondent would be as guilty as the Applicant in not taking a course that was less costly. Infact being the common denominator in both proceedings the Respondent bore a greater responsibility in seeking the consolidation. The Respondent should not now begrudge the Applicant's quest for costs.

7. In these circumstances, I am unable to say that the conduct of the Ex-parte Applicant has led to unnecessary or wasteful proceedings. For this reason I will allow the Ex-parte Applicant to have costs herein.

8. I am certain that, eventually, in arriving at the amount of Costs the parties or the taxing master will bear in mind that the matter did not proceed to full hearing and that in fact the limb of stay had not argued.

Dated and delivered at Mombasa this 16th day of October, 2012.

F. TUIYOTT
JUDGE

Dated and delivered in open court in the presence of:-
Fwaya for the Applicant
No appearance for the Respondent
Court clerk - Moriasi

F. TUIYOTT
JUDGE