



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 530 OF 2008

REPUBLIC.....APPLICANT

AND

**THE PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW
BOARD.....RESPONDENT**

**BRINKS SECURITY SERVICES LTD.....INTERESTED
PARTY**

EX PARTE: EGERTON UNIVERSITY

RULING

It is a settled principle of law that award of costs is in the discretion of the court. See **KISKA LTD vs. DE ANGELS [1969] E.A. 6. Section 27** of the **Civil Procedure Act** provides that the costs of any action, cause or other matter or issue shall follow the event unless the court shall for good reason otherwise order.

On 1st December, 2010 the advocates for the parties herein agreed by consent that the substratum of this matter had been lost by effluxion of time and that the only outstanding issue is whether the Interested Party is entitled to the costs of the suit. As between the applicant and the respondent the matter was marked as settled with each party bearing its own costs.

The facts that gave rise to the suit may be simply stated as follows: The Interested Party filed an appeal before the **Public Procurement Administrative Review Board**, the respondent, on 23rd July, 2008. The appeal was against the decision of the Tender Committee of Egerton University, the ex parte applicant. The Interested Party successfully challenged the tendering process and the award of tender for provision of security services was annulled and the ex parte applicant was ordered to re-tender within 90 days. The ex parte applicant was ordered to review the contract of the Interested Party for a period of 90

days pending conclusion of the tendering process.

The ex parte applicant re-advertised the tender but refused to comply with the order of the Board requiring the contract of the Interested Party to be extended for 90 days pending the tendering process. The orders of the Board were made on 22nd August, 2008 and the ex parte applicant moved this court for judicial review orders on 1st September, 2008. The court certified the matter urgent, granted leave and directed the ex parte applicant to file the substantive motion within 21 days from the aforesaid date. The court further directed that the grant of leave do operate as stay of the orders of the Board. The ex parte applicant filed the substantive application on 8th October, 2008.

The ex parte applicant's application, having been marked as overtaken by events, the decision of the Board which was in favour of the Interested Party is left intact. This is because the court did not make any findings on the merits of the ex parte applicant's application. In the circumstances, the Interested Party is entitled to the costs of the application. In any event, the Interested Party was not to blame for the fate of the ex parte applicant's application.

This court finds that the Interested Party is entitled to the costs of the matter. The costs shall be taxed as usual unless agreed upon.

DATED, SIGNED and DELIVERED at NAIROBI THIS 1ST DAY OF FEBRUARY, 2011.

D. MUSINGA

JUDGE

In the presence of:

Nazi – court clerk

No appearance for the applicant

No appearance for the respondent

Morris Kimuli for the interested party