



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 417 OF 2007

REPUBLIC.....APPLICANT

VERSUS

THE PERMANENT SECRETARY MINISTRY OF STATE FOR DEFENCE.....RESPONDENT

EX-PARTE.....R.M. KINYANJUI

RULING

By an application dated 7th May, 2007 the ex parte applicant sought an order of mandamus to compel the respondent to pay a sum of **Kshs.22,881,244/=** being the decretal sum together with interest accrued thereon in **High Court Miscellaneous Cause No. 678 of 2006 at Nairobi, R.M. Kinyanjui Vs. The Government of the Republic of Kenya**. He also sought costs of the application. The claimed sum was paid to the ex parte applicant's advocate sometimes in August 2007. When the matter was mentioned sometimes thereafter before Nyamu, J. (as he then was), the applicant's advocate confirmed that he had received payment and the only issue subsisting was costs of the application. On 8th April, 2008 when the matter came up before Wendoh J. the ex parte applicant's advocate sought leave to amend the statement filed on 24th April, 2007. The court directed that a formal application be filed, which was done. Subsequently, the applicant was granted leave to amend the statement regarding the relief sought by adding prayer numbers 3A, 3B and 3C thereto as hereunder:

“3A An order for costs of the proceedings herein be awarded to the ex parte applicant.

3B An order for interest to be awarded on the costs and all sums found to be due to the ex parte applicant.

3C Such further orders, any other relief and/or directions as this honourable court may deem fit to grant.”

There is no dispute that the aforesaid sum was paid subsequent to the filing of the ex parte applicant's Notice of Motion seeking an order of mandamus as aforesaid. **Section 27 of the Civil Procedure Act** states as follows:

“27. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

provided that the costs of any action, cause or other matter shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding 14% per annum and such interest shall be added to the costs and shall be recoverable as such.”

The respondent submitted that since he did not oppose the applicant's application and made settlement in good time the court should not make any order as to costs against him.

It is not in dispute that ordinarily costs follow the event. In my view, it would be unreasonable to deny the applicant the costs of the motion together with interest thereon. The decree in **Miscellaneous Cause No. 678 of 2006** was issued on 11th December, 2006. Paragraphs 1, 2 and 3 of the decree stated as follows:

“1. The respondent do pay the claimant the Arbitral Award for payment of Kshs.21,289,669.00/= being the principal sum together with interest therein.

2. That the respondent do further pay to the claimant Kshs.368,512/= being the interest on the sum of Kshs.15,354,648.80 from 19th August, 2006 up to 1st December, 2006 making an aggregate sum of Kshs.21,658,181.00 and which sums will attract further interest until payment in full.

3. That the respondent do pay the claimant the cost of the application.”

The Certificate of Order against the Government that was issued on 15th February, 2007 stated that the total amount inclusive of interest payable to the applicant was **Kshs.22,881,244/=** with further interest of **Kshs.333,175/=** on the sum of **Kshs.15,354,648.80** at the rate of **12%** per annum from 2nd December,

2006 until 5th February, 2007 and such further interest accruing thereon until payment in full.

The respondent paid **Kshs.22,779,946/=** on 8th August, 2007. As at that date the decretal sum had attracted further interest and which ought to be computed at the rate of 14% per annum. After 8th of August 2007 to date the unpaid interest has also accrued further interest and the applicant is entitled to the same. The applicant is also entitled to the costs of the application.

If counsel for the parties are not able to agree on the sums payable by way of costs and interest, the applicant will have to file a bill of costs for taxation. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF SEPTEMBER, 2011.

D. MUSINGA
JUDGE

In the presence of:

Nazi – Court Clerk

Mr. Billing for the Applicant

Miss Baraza holding brief for Mr. Bitta for the Respondent