



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS APPLICATION 1125 OF 1997

PHILAN HOLDINGS LTD PLAINTIFF

V E R S U S

NAIROBI CITY COUNCIL1ST RESPONDENT

ABDULLA HUSSEIN 2ND RESPONDENT

MANIDHAR PURSHOTTAMDS AMIN..... 3RD RESPONDENT

ABDUL AZIZ SULEMAN 4TH RESPONDENT

R U L I N G

On the issue of costs

1: Background

1. This matter has been compromised. A background briefly being that rates were due for property LR 209/2566 to the 1st respondent, City Council of Nairobi. The property was sold by public auction on 13th May, 1994 and purchased by the applicant. Instead of applying to the High Court for vesting orders, the applicant applied to the subordinate court (RMCC 406/92). The said orders were quashed by the High Court (HCCC MISC 583/95) for want of jurisdiction.

2. The applicant filed this present originating summons (16th December, 1997) on 17th December, 1997 seeking vesting orders.

3. On 9th April, 2008 (11 years later) parties concede to the application. Orders as to costs against the interested party and the 2nd and 3rd respondents and respondent were that each of the litigants would bear their own costs. The applicant and the 1st respondent, City Council of Nairobi wished for this court to determine the issue of costs between the two parties.

II: Issue of costs

4. The applicant Philan Holdings Limited recommends to court that each party bears its own costs. The reasons being that the applicant brought the suit in a public auction and had no choice but to apply for vesting orders. It had no option but enjoin the City Council of Nairobi. There having been no blame

costs follows the events. The applicants therefore prays each party to bear its own costs.

5. In reply the 1st respondent, the City Council of Nairobi prays that parties are bound by their pleadings. The only reasons there was no vesting orders was due to objection of sale being taken by the interested party. That costs be paid to the City Council of Nairobi.

6. The interested party made no submissions.

III Opinion

7. It is the discretion of the court as to costs. Though costs follows the events in this situation, it is the City Council of Nairobi, (1st respondent herein) who should have made all efforts to ensure that this matter was finalized. They are the ones who sold the property to the applicant. The applicant made an error in first filing the matter in the wrong court but they finally filed the matter in this High Court. It has taken 11 years to deal with the vesting orders. The parties kindly compromised this matter and each agree that they bear their own costs. I would in the circumstances use my discretion and order that the 1st respondent and the applicant bear their own costs.

DATED THIS 10TH DAY OF APRIL 2008 AT NAIROBI

M. A. ANG'AWA

JUDGE

D. Mungata instructed by Gichuru Mungata & Co. Advocates for the plaintiff/applicant – present

I.W. Maina instructed by E.N. Omotii & Co. Advocates for the 1st respondent – present

D. Mungata holding brief for J.O. Areba instructed by Sharad Rao & Co. Advocates for the interested party - present