



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc. Application Case 50 of 2007

**IN THE MATTER OF: AN APPLCIATION BY MUNICIPAL COUNCIL OF ELDORET FOR
LEAVE TO COMMENCE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF
MANDAMUS:**

AND

**IN THE MATTER OF: THE LAND ACQUISITION COMPENSATION TRIBUNAL APPEAL
NO. 2 OF 2007**

AND

**IN THE MATTER OF: SECTIONS 8 AND 9 OF THE LAW REFORM ACT AND ORDER LIII
OF THE CIVIL PROCEDURE RULES:**

RULING

I: Background

1. This matter brought under Judicial Review Proceedings filed on 24 October 2007 for leave concerns the Land Acquisition Compensation.
2. The Municipality Council of Eldoret were awarded 20 acres of land from LR. 77832 (part) that belonged to the Kenya Railways. The parcel of land is now known as Eldoret Municipality Council Block 10/11. The award once made the Kenya Railways Cooperation appealed, not being satisfied with this decision. The City Council of Eldoret came to be withdrawn the acquisition process with the Commissioner of Lands and the withdrawal of gazette notice 1399/02 and 1400/02.
3. They had deposited Ksh.5,884,519/90 towards the compensation to be paid with the Commissioner of Lands. This was to be released to them.
4. A consent to this effect was entered into by all parties concerned.
5. The Commissioner of Lands failed to pay the said compensation sum back to the Municipality Council of Eldoret. The council filed this Judicial Review seeking orders of Mandamus directed at the Commissioner of Lands and the Attorney General to release the said sum.
6. Leave was duly granted. On the day fixed for hearing of the notice of motion application to the state had paid the sum back as required. Nonetheless the state objected to any costs being paid.
7. This court gave the parties an opportunity to attend to this court on 19 June 2008 at 9.00 a.m. to

submit on the issue of costs.

8. On the said day the advocate of the state was absent under order IXB r 3(a) Civil Procedure Rules the submission by the exparte applicant was heard.

II: Costs

8. The exparte applicant prayed for costs on the ground that if the Judicial Review proceeding had not been filed, no costs would have arisen. Though the issue of costs is at the courts discretion the court to accordingly award this.

III: Opinion

9. Under Section 27 of the Civil Procedure Act. Costs at the discretion of the courts.

Robert Mongare Ikoru

V

SS Metha & Sons Ltd

Hccc423/99

Anga'wa J unreported refers

10. I accordingly awards costs to the exparte applicant against the respondent.

DATED THIS 19TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

K.K. Katwa instructed by Katwa Kemboi & Co. Advocates for the applicant – present

Attorney General Advocate for the Respondent – absent