



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

Civil Case 615'A' of 2007

1. CHRISTINE NYARUAI MURIUKI
2. EVERLYN WANJIRU MURIUKI

**(Suing as the legal representative of the
Estate of FRANCIS CHARLES MURIUKI)PLAINTIFFS**

V E R S U S

1. UAP PROVINCIAL INSURANCE COMPANY
2. MORRIS NJUE (t/a Baseline Architects)
3. MULTIBONUS INSURANCE BROKERS.....DEFENDANTS

R U L I N G

The Plaintiffs, who are the administrators of the estate of the late FRANCIS CHARLES MURIUKI (hereinafter called the Deceased), filed suit herein against the Defendants and sought various reliefs against them jointly and severally. The Plaintiffs were basically seeking payment by the 1st Defendant to the estate of the Deceased the proceeds of some insurance policy. They alleged that the 1st Defendant had refused to pay at the instance of the 2nd and 3rd Defendants. The Deceased had been a partner of the 2nd Defendant in a business or architectural practice called BASELINE ARCHITECTS. It would appear that they had jointly taken up the insurance policy. The 3rd Defendant was the insurance broker in the transaction.

The 1st Defendant entered appearance but did not file defence in order to mitigate costs; it was its stand that it was prepared to pay the Plaintiff's claim subject to payment of some outstanding premiums and resolution of the dispute between the Plaintiffs and the 2nd and 3rd Defendants over the same claim. The 2nd and 3rd Defendants did not enter appearance nor file defence.

Subsequently, the Plaintiffs filed an application by chamber summons dated 2nd August, 2007 which, if allowed, would have had the effect of determining the suit. The 1st Defendant opposed the application. On 21st November, 2007 when the application came up for hearing the following consent as between the Plaintiffs and the 1st Defendant was recorded:-

“By consent-

- 1. The Applicants (meaning the Plaintiffs) shall within seven (7) days of today pay to the 1st Respondent (the 1st Defendant) the agreed outstanding premiums of KShs. 593,186/00.**
- 2. Within fourteen (14) days of payment of the outstanding premiums, the 1st Respondent shall pay to the Applicants through their advocates on record the sum claimed of KShs. 5 million less KShs. 158,920/00 (i.e. KShs. 4,841,080/00).**
- 3. The said KShs. 158,920/00 shall be held by the 1st Respondent pending determination either by the court or by consent of the issue as to who shall bear the costs of these proceedings. Such costs shall be paid from the aforesaid sum of KShs. 158,920/00.**
- 4. Once the issue of costs is settled, the suit herein shall stand marked as settled.**
- 5.”.**

As can be seen this consent settled the entire suit except the issue of costs. Costs are at the discretion of the court. See section 27(1) of the Civil Procedure Act, Cap 21. But under the proviso thereto, costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

What was the event here? Who succeeded as per the consent order of 21st November, 2007? I have read the pleadings herein and the correspondence exchanged between the Plaintiffs and the 1st Defendant prior to filing suit. I have also given due consideration to the written submissions filed for the parties.

The 1st Defendant had refused to pay the Plaintiffs’ claim because of unpaid premiums. There is evidence in the correspondences exchanged between the parties that the Plaintiffs had resisted the demand to pay these unpaid premiums. It may appear that the 1st Defendant was over-cautious in its response to the demand of the Plaintiffs, but it must be remembered that there were, apparently, rival claims and representations made to it by the 2nd and 3rd Defendants whom the Plaintiffs have apparently chosen not to pursue with regard to costs. The Plaintiffs should also bear in mind the possible effect to the policy of insurance the unpaid premiums might have had should the 1st Defendant have chosen to pursue that line.

Having considered all the circumstances of this case, it is clear to me that both parties have succeeded. The Plaintiffs have got their money while the 1st Defendant has got its unpaid premiums. I rule that the order with regard to costs that will best serve the interests of justice is that the parties do bear their own costs of the suit. It is so ordered. That being the case, the sum of KShs. 158,920/00 retained by the 1st Defendant in terms of the consent order of 21st November, 2007 shall be forthwith released to the Plaintiffs through their advocates on record. The suit herein is hereby marked as settled, also as provided for in the aforesaid consent. It is so ordered.

DATED AT NAIROBI THIS 25TH DAY OF NOVEMBER, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 28TH DAY OF NOVEMBER, 2008