

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

Civil Case 117 of 2006

MARTIN MAMICHA MUGI

T/A MAMICHA & COMPANY ADVOCATES.....PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....DEFENDANT

JUDGEMENT

Before me for determination is the Notice of Motion dated 19th January, 2007 brought under Order 35 Rule 1 of the Civil Procedure Rules. It is an application by the plaintiff seeking summary judgement for the sum of Kshs.6,670,648/05 plus costs and interest.

It is the case of the plaintiff that the statement of defence on record is a mere sham which does not raise any bonafide triable issues worth going for trial. It is also contended that the defence is merely calculated to delay the fair and expeditious conclusion of this action.

The application is supported by the affidavit of Mr. Martin Mamicha Mugi an Advocate of the High Court of Kenya

avers that the plaintiff filed a request for particulars and the defendant filed its reply to the particulars on 13th December, 2006 claiming that the alleged overpayment of Kshs.7 million was made in respect of HCCC No.1028/99 and HCCC No.1047/2000. The Advocate contends that his firm filed a bill of costs namely HCC Misc. Civil Application No.644/2004 against the defendant. And that the said bill was taxed by the court in the sum of Kshs.170,080/50 and annexed a copy of the certificate of taxation issued by the court.

It is also contended by the plaintiff that in HCCC No.1047/2000, a bill of costs was filed and taxed by the court at Kshs.397,514/=.

I have considered the application for summary judgement, the supporting affidavit and the submission made by Mr. Mungai for the plaintiff. The only issue in the defence is an alleged overpayment made to the plaintiff's firm of Advocates. The plaintiff then filed a chamber summons dated 12th July, 2006 seeking for an order to compel the defendant to supply the particulars of the said overpayment.,

The said application for particulars was heard and determined by Lady Justice Kasango, who ordered the defendant to supply the particulars within 30 days from 13th October, 2006. It appears no particulars had been supplied by the defendant. It is also clear that the defendant did not file any reply to the present application. The Advocate for the defendant was served on 5th April, 2007 but despite service, he did not participate in this proceeding to make submissions on behalf of the defendant. I am satisfied that there is no single triable issue or issues that ought to go for trial.

The defendant filed a sham defence merely to delay the claim of the plaintiff. The plaintiff rendered services to the defendants which must be paid for by the defendant. The bill of costs was taxed and the plaintiff annexed certificate of taxation as a testimony of the said taxation. It is clear from the material

placed before me that the defendant has no genuine defence to the claim of the plaintiff. The purpose of Order 35 of the Civil Procedure Rules is to eliminate delays in the administration of justice, which would keep parties out of their just dues or enjoyment of their labour. The court is therefore, empowered to throw away sham defences and enter judgement where no triable issue exist. I am satisfied that no triable issue exists in this matter.

I therefore enter judgement as prayed plus costs and interest at court rate.

Dated and delivered at Nairobi this 11th day of May, 2007.

M. A. WARSAME

JUDGE